

# Estates Court Staff Procedures Manual

**In effect on February 6, 2024**

Court Services Division  
Ministry of the Attorney General



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Despite any direction contained in this manual, court staff are subject to judicial direction pursuant to s. 76 of the [Courts of Justice Act](#) and the court rules and legislation (for example rules 74.14(1)(b) and 74.1.04(1)(b) of the *Rules of Civil Procedure*).

**Updated February 6, 2024.** For a summary of amendments made to this manual between October 4, 2023 and February 6, 2024, see [Appendix A](#).

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## Section 1. Overview

### 1.1 References and Definitions

The purpose of this manual is to provide guidance to estate court staff in the Ontario Superior Court of Justice who process probate Applications and other estate court Applications and supporting documents.

Statutory information is contained in the text only when needed for clarity or in areas where challenges often arise. When applicable, the content of this manual includes the appropriate statutory citations.

This manual contains references to the following legislation:

- ▶ [Rules of Civil Procedure](#) (Rule 74, 74.1 and 75), a regulation under the [Courts of Justice Act](#)
  - Sets out the estate court procedures relating to probate Applications
  - Rule 74 addresses non-contentious probate Applications for estates of any value (seeking a Certificate of Appointment of Estate Trustee)
  - Rule 74.1 addresses non-contentious probate Applications for estates valued at up to \$150,000 (seeking a Small Estate Certificate or Amended Small Estate Certificate)
  - Rule 75 addresses contentious estate Applications (for example, where a beneficiary objects to the appointment of a person as an estate trustee and/or challenges the validity of a Will)
- ▶ [Estates Act](#)
  - Sets out the jurisdiction of the Superior Court of Justice to hear probate Applications
  - Establishes the entitlement of persons to apply for probate
  - Establishes the rules with respect to the security (bonds) that must be provided in certain probate Applications
  - Requires the court office to keep original wills
- ▶ [Estate Administration Tax Act, 1998](#)
  - Requires court staff to collect a deposit of the Estate Administration Tax on the filing of a probate Application

- Requires persons who are issued a Certificate of Appointment of Estate Trustee or Small Estate Certificate to file an Estate Information Return with the Ministry of Finance within 180 days
- Establishes the process for requests for refunds of the Estate Administration Tax deposit
- ▶ [Family Law Act](#)
  - Establishes the impact of an [election](#) in favour of an equalization of net family properties on a surviving legal spouse's entitlement to inherit under the Will or on an intestacy.
- ▶ [Succession Law Reform Act](#)
  - Establishes the scheme to determine the validity of a Will or Codicil
  - Establishes the scheme to determine who inherits a share of an estate where the deceased died intestate (without a Will)
  - Establishes the scheme relating to the validity of gifts made under a Will or Codicil
  - Establishes restrictions on the entitlement of a former spouse (separated or divorced) to apply to act as estate trustee under a Will.

The use of prescribed court forms is required for court Applications to the Superior Court of Justice. These forms are available on the Court's website at: [Rules of Civil Procedure Forms / Estate Forms under Rule 74 and 75 of the Rules of Civil Procedure | Ontario Court Services \(ontariocourtforms.on.ca\)](#). They are referenced, as appropriate, at the end of text that is contained in this manual.

The [Rules of Civil Procedure](#) and [Estates Act](#) define the terms used in probate Applications. They sometimes use different terms to describe the same roles and documents. A comparison of the terms in the *Rules of Civil Procedure* and *Estates Act* is set out in [Table 1](#).

The use of the term "probate Application" in this manual refers to Applications with or without a Will for a Certificate of Appointment of Estate Trustee, Small Estate Certificate or Amended Small Estate Certificate.

Please note, however, that "letters probate" technically refers to a Certificate with a Will, while "letters of administration" refers to a Certificate without Will. See the *Estates Act* definitions in [Table 1](#).

The use of the term "Certificate of Appointment" in this manual refers to a Certificate of Appointment of Estate Trustee, a Small Estate Certificate or an Amended Small Estate Certificate. It is defined in [Table 1](#).

Table 1. - Definitions of Rules of Civil Procedure terms and corresponding Estates Act terms

Term in Rules of Civil Procedure	Term in Estates Act	Definition
<b>Estate Trustee</b> <a href="#">[R.74.01]</a>	Executor, administrator or administrator with the Will annexed	Person who is authorized to administer the estate of a deceased person. Also referred to as a “personal representative”.
<b>Estate Trustee with a Will</b> <a href="#">[R.74.01]</a>	Executor or administrator with the Will annexed	Person who is named in a Will as an estate trustee and authorized by the Will to administer the estate of a deceased person in accordance with the direction in the Will or person who is authorized by the Superior Court of Justice to administer the estate of a deceased person where there is no estate trustee appointed in the Will who is living, willing and able to act.
<b>Estate Trustee without a Will</b> <a href="#">[R.74.01]</a>	Administrator	Person who is authorized by the Superior Court of Justice to administer the estate of a deceased person who died without a Will or died with a Will but the Will did not name an estate trustee. Person must be an Ontario resident and over the age of 18 years.
<b>Estate Trustee during litigation</b> <a href="#">[R.74.01]</a>	Administrator appointed pending an action (pendente lite)	Person who is appointed by a Judge’s order to act as a temporary estate trustee with limited powers during the period that the estate is in litigation (for example, when the validity of a Will is challenged). The person appointed does not have the right to distribute the estate assets and their actions are subject to judicial direction.
<b>Certificate of Appointment of Estate Trustee</b> <a href="#">[R. 1.03]</a>	Letters probate, letters of administration or letters of administration with the Will annexed, and includes a small estate certificate or amended small estate certificate	A document issued by the Superior Court of Justice authorizing a person to act as the estate trustee of an estate or if there is a Will that names an estate trustee who is living, willing and able to act, confirming the estate trustee named in the Will and validating the Will.
<b>Certificate of Appointment of Estate Trustee with a Will</b>	Letters probate or Letters of administration with the Will annexed (this is a grant where no estate trustee is named in the Will or the named estate trustee is unwilling or unable to act)	A document issued by the Superior Court of Justice confirming the authority of the estate trustee named in the Will to administer an estate and validating a Will as the deceased’s last Will. If there is no estate trustee appointed in the Will who is living, willing and able to act, document authorizing a person to act as the estate trustee.
<b>Certificate of Appointment of Estate Trustee without a Will</b>	Letters of administration	A document issued by the Superior Court of Justice authorizing a person to act as the estate trustee of an estate.
<b>Certificate of Appointment of Succeeding Estate Trustee With a Will</b>	Letters double probate	Where an estate trustee who has obtained probate dies before the estate is completely administered and it is necessary to replace the estate trustee, this Certificate can be granted by a Judge through a court order.
<b>Certificate of Appointment of Succeeding Estate Trustee Without a Will</b>	Letters of Administration de Bonis Non Administratis With or Without Will Annexed	Where an estate has not been completely administered and the executor or administrator with Will annexed has died or the administrator on an intestacy has died, this Certificate can be granted by a Judge through a court order.
<b>Certificate of Ancillary Appointment of Estate Trustee With a Will</b>	Ancillary Letters Probate or Letters of Administration With Will Annexed	Where a foreign court of competent jurisdiction has granted probate or letters of administration with the Will annexed of an estate that includes property in Ontario, this Certificate can be granted.

Term in <i>Rules of Civil Procedure</i>	Term in <i>Estates Act</i>	Definition
<b>Confirmation by Resealing of Appointment of Estate Trustee With or Without a Will</b>	Resealing Letters Probate or Letters of Administration	Where Letters Probate or Letters of Administration have been issued out of a court of competent jurisdiction in either the United Kingdom, in Canada or in any British possession (in accordance with our practice, means a country that is a member of the Commonwealth), the original grant may be resealed by the Superior Court of Justice and an ancillary certificate is not required.
<b>Notice of Objection</b> <a href="#">[R.74.01]</a>	Caveat	A document filed with the court by a person with an interest in the estate (for example, estate beneficiary or estate creditor) who opposes another person's Application for a Certificate of Appointment of Estate Trustee. It has the effect of halting ("staying") the processing of the Application and halting the issuance of a Certificate of Appointment until a Judge decides the issue on a motion for directions or until the Notice expires, is withdrawn, or the applicant provides the Objector with a Notice to the Objector and the Objector fails to enter a Notice of Appearance.

*Table 2. More terms relating to probate Applications*

Term	Definition
<b>Proof of death</b> <a href="#">[R.74.01]</a>	Documentary evidence of a person's death, including a death certificate issued by the Registrar General, a certificate in respect of the death issued by a funeral director, or an order made under the <i>Declarations of Death Act</i> .
<b>Administration Bond</b>	The security required by the <i>Estates Act</i> which is posted by an applicant for a Certificate of Appointment to ensure that they will perform their duties according to the provisions of legislation and the Will, if any. The bond covers any financial losses to the estate due to dishonest or improper acts by the estate trustee.
<b>Beneficiary</b>	A person entitled to benefit from a deceased's estate, whether under the Will or according to applicable intestate succession laws.
<b>Codicil</b>	An additional or supplementary document that modifies or revokes a Will. It is a testamentary document that must be executed in the same way as a Will.
<b>Holograph Will</b>	A will that is written entirely in the handwriting of the testator and signed by the testator by hand (it is typically <u>not</u> a holograph will if it is partially written, for example, a fill-in-the-blank form; judicial determination may be required).
<b>Estate</b>	All of the assets and liabilities of a deceased at the time of death (real estate and personal property).
<b>Intestate</b>	The condition of having died without having left a valid Will.
<b>Testate</b>	The condition of having left a valid Will at the time of one's death.
<b>Testator</b>	A person who made a Will.
<b>Trustee</b>	A person who holds property in trust for another person(s).
<b>Will</b>	The written document by which a person instructs how their estate should be distributed after death. Includes any testamentary instrument of which probate or administration may be granted.



<b>Term</b>	<b>Definition</b>
<b>Common Form</b>	A Will may be proved in common form where probate is issued on the Application for a Certificate of Appointment of Estate Trustee.
<b>Solemn Form</b>	Now referred to as formal proof of a testamentary instrument. A Will may be proved in solemn form before a Judge, upon notice to all persons having a financial interest in an estate. An Application to prove a Will in solemn form is brought where a Will has been lost or destroyed).
<b>Certificate of Appointment of Estate Trustee With A Will Limited To The Assets Referred To In The Will</b>	Where the deceased has left two or more valid Wills, the estate trustee may apply for a certificate of appointment of estate trustee limited to assets in one Will only. The declared value of the estate is the value of the assets covered by the Will submitted with the Application. A Certificate of Appointment of Estate Trustee With A Will Limited To The Assets Referred To In The Will may be issued by order of a Judge of the Superior Court of Justice with only the Will submitted with the Application attached.
<b>Certificate of Appointment of Foreign Estate Trustee's Nominee as Estate Trustee Without A Will</b>	Where an estate trustee without a Will has been appointed in the foreign jurisdiction where the deceased resided at death, the estate trustee must nominate a person within Ontario as estate trustee since a certificate of appointment of estate trustee without a Will cannot be issued to a person resident outside Ontario.
<b>Tenancy in Common</b>	A legal arrangement in which two or more people own a property together and the interest in the property is divided. This also means if one party passes away, their share is not passed on to the other common owner, but rather to their estate beneficiary. Each owner may dispose of their share in the property by their Will.
<b>Joint Tenancy</b>	A legal arrangement in which two or more people own a property together, each with equal rights and obligations. This legal relationship creates what is known as a right of survivorship so if one owner dies the surviving party(s) continue to have an undivided interest in the whole property. An asset held in joint tenancy does not form part of the deceased's estate.
<b>Lapse</b>	A lapsed gift is a gift in a Will that cannot take effect because the gift has failed. A lapsed gift cannot be passed to the named beneficiary. A gift may lapse because a beneficiary has predeceased the testator.
<b>Bequest</b>	A gift of personal property given by Will.
<b>Devise</b>	A gift of real property given by Will.
<b>Legacy</b>	A gift (bequest) of personal property given by Will. Legacies may be specific, general or demonstrative. A specific legacy is a gift of some ascertained item or thing forming part of the estate that, by its description, is distinguished from the mass of their personal estate. A general legacy is a gift that is not so separated from the general mass of the personal estate (a pecuniary legacy is a general legacy). A demonstrative legacy is a pecuniary legacy that is payable out of a particular fund.
<b>Next-of-kin</b>	A person's closest living relatives through blood or legal relationships (marriage and adoption).
<b>Issue</b>	Descendants of any generation, including a descendant conceived before and born alive after the person's death (for example, children, grandchildren and other lineal descendants of a person) and descendants conceived and born alive after the person's death if the conditions in the <a href="#">Succession Law Reform Act</a> s. 1.1(1) are met (posthumously conceived descendants).
<b>Per capita</b>	In equal shares, one share per person. Each person is intended to receive an exactly equal portion of your estate, even if this means that one branch of the deceased's family will receive more than another.

<b>Term</b>	<b>Definition</b>
<b>Per stirpes</b>	Means that estate assets are to be divided equally by each branch of the family when there are surviving descendants in that branch. If any of the deceased's beneficiaries aren't living at the time of the deceased's death, their share of the estate will pass to their descendants.
<b>Trust</b>	A legal document that gives a person the authority to handle the creator's assets for the benefit of a third party, the creator's beneficiaries.
<b>Inter vivos trust</b>	A trust that takes effect during the lifetime of the trust's creator.
<b>Sui Juris</b>	An adult person (18 years or older) who is not under a legal disability (is legally competent to manage their own affairs).
<b>Notice of Commencement of Proceeding</b>	A person with a financial interest in an estate may request Notice of Commencement of a Proceeding (of an Application for a Certificate of Appointment). When this request is filed and then an Application for a Certificate of Appointment is later filed, a court registrar will give the requestor Notice of Commencement of the Proceeding.
<b>Order for Assistance</b>	Requests for an order for assistance may be brought by any person appearing to have a financial interest in an estate. With one exception (an Order for Further Particulars), orders can be issued on a without notice basis. The order is a mechanism that may be used to require a person to do something to enable an estate trustee to begin or to proceed to administer an estate; may also be used to address certain special aspects of the estate where there is no real disagreement between beneficiaries. Formerly called a Citation
<b>Status Certificate</b>	Confirms the historical events of an estate and the status of an estate trustee authorized to administer a particular estate whether unchanged or changed by operation of law.



## 1.2 What is probate (Application for a Certificate of Appointment of Estate Trustee)?

When a person dies they may leave behind belongings, real estate and other assets and liabilities, all of which together is called their estate.

In Ontario, an estate trustee is the only person with the legal authority to manage or distribute the estate of a deceased person.

Probate is a procedure to ask the court to:

- give a person the authority to act as the estate trustee of an estate; or
- confirm the validity of the deceased's Will and the authority of a person named as the estate trustee (whether named in the Will or not)

If a person needs to apply for probate of an estate, they can apply to the Ontario Superior Court of Justice for a Certificate of Appointment of Estate Trustee or a Small Estate Certificate.

They can apply for a Small Estate Certificate if the estate is valued at no more than \$150,000. They can apply for a Certificate of Appointment of Estate Trustee for an estate of any value.

If a probate Application is successful, the court will issue a Certificate of Appointment of Estate Trustee or a Small Estate Certificate, which is proof that a person has the legal authority to deal with the estate and - if there is a will – is proof that the will is valid.

## 1.3 When would a person apply to the court for probate?

Probate is not always required in order to administer an estate. The type of assets in the estate usually determines whether an estate should be probated. If the deceased owned real property or assets held by a financial institution, the estate generally has to be probated. In some cases, an estate trustee may not have to probate but may want to do so to obtain the protection afforded by law by probate for dealing with the estate assets in accordance with the deceased's Will.

Before applying for probate, a person may wish to determine whether the person or financial institution holding the estate assets or requiring a payment or action by the estate requires them to obtain a Certificate of Appointment of Estate Trustee or a Small Estate Certificate. See [Section 1. "How can a person determine whether a probate Application has been commenced?"](#)

An Application for probate would generally be made if any one or more of the following conditions exist:

- the deceased person died without a Will;
- the deceased's Will does not name an estate trustee;
- a financial institution wants proof of a person's legal authority to receive the money or investments of the deceased;

- the estate's assets include real property which does not pass to another person by right of survivorship;
- the deceased's real property must be sold (a Certificate of Appointment of Estate Trustee or a Small Estate Certificate should be obtained before anyone enters into an Agreement of Purchase and Sale);
- there is a dispute about who should be the estate trustee;
- there is a dispute or potential dispute about the validity of the Will; or
- some beneficiaries named in the Will are not able to provide legal consent

Before a person starts an Application for probate, they may want to determine whether anyone else has already started a court Application or has been issued a certificate. This can avoid the possibility that their Application is rejected because another Application was started or a certificate was already issued. A person can look into this by contacting the estate trustee named in the Will (if any) or the estate trustee's lawyer (if any), relatives and friends of the deceased or by contacting the court office in the county or district where the deceased lived at the time of death. If the deceased was not living in Ontario when they died, they can contact the [Court](#) in the location where the deceased owned Ontario property.

#### 1.4 How can a person determine whether a probate Application has been commenced?

A person can contact an estates court office to determine whether a probate Application was filed with the court.

A person who has a financial interest in the estate can ask the court to inform them of the start of any proceedings by filing [Form 74P](#) with the court (Request for Notice of Commencement of Proceedings). This request expires three years after filing, but a further request can be filed any time before the court issues a certificate.

To learn about the administration of an estate, a person can contact the estate trustee and/or the estate trustee's lawyer. If the [Ontario Public Guardian and Trustee](#) was appointed as the estate trustee, they can contact them.

#### 1.5 How can an estate beneficiary respond to a probate Application?

A person with a financial interest in an estate (for example, an estate beneficiary or estate creditor) who is served with a probate Application can object to the issuance of a Certificate of Appointment of Estate Trustee to the applicant. A person would object to an Application by serving on the applicant and filing with the court a Notice of Objection ([Form 75.1](#)).

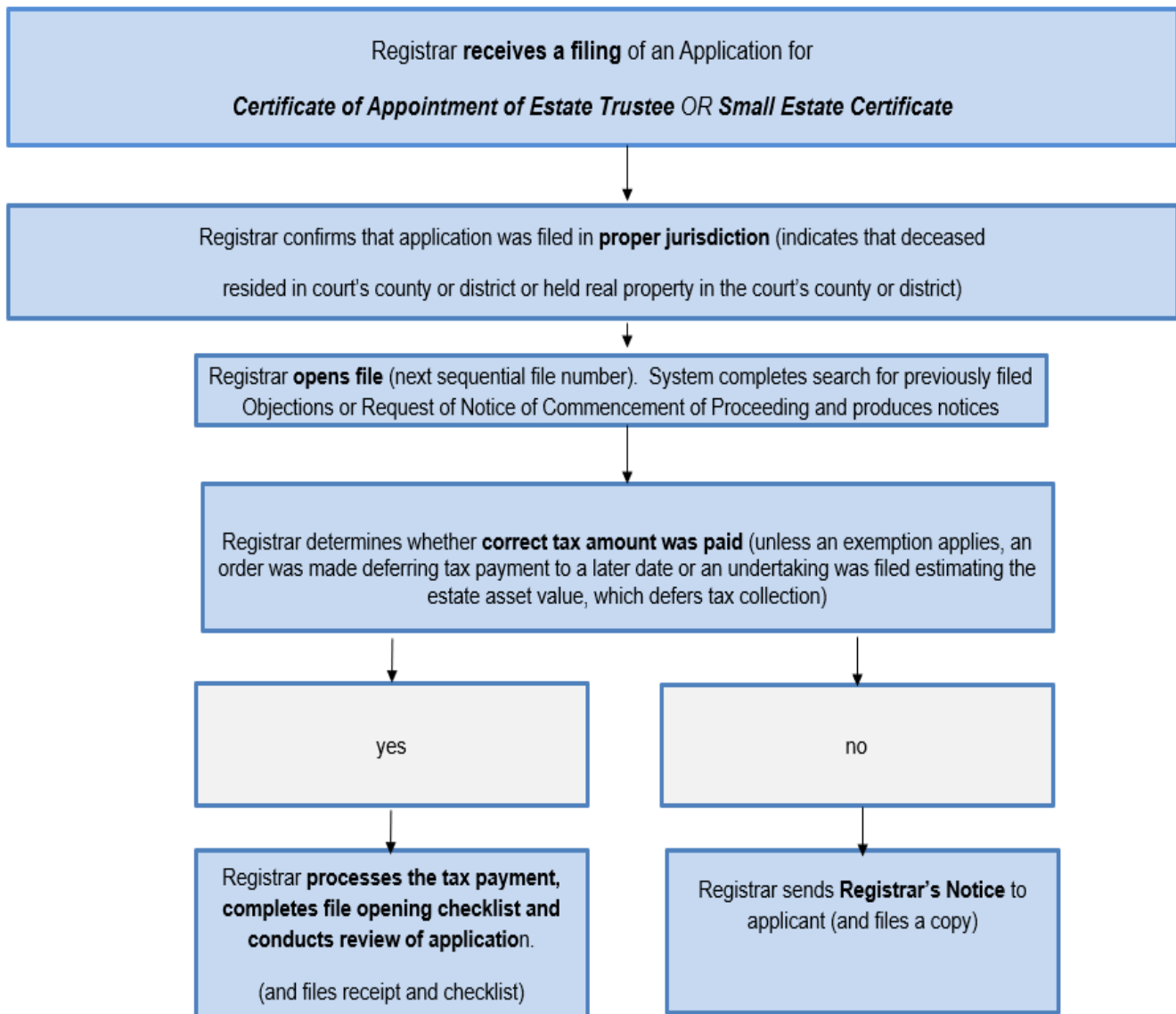
Before a probate Application is filed, a person with a financial interest in an estate can consent to an Application by signing a Consent Form 74H dated September 1, 2021 or Form 74G Part B dated November 1, 2023 and, if they are consenting to another person acting as an estate trustee but have a right to act as estate trustee, they may file a Renunciation of their entitlement to act as estate trustee ([Form 74G](#) dated September 1, 2021 or [Form 74G](#) Part A dated November 1, 2023). See [Section 6.1.1](#) - Is the applicant applying without a will or applying with a will but is not named in the will as an estate trustee or alternate estate trustee?

## **Section 2. Process Overview**

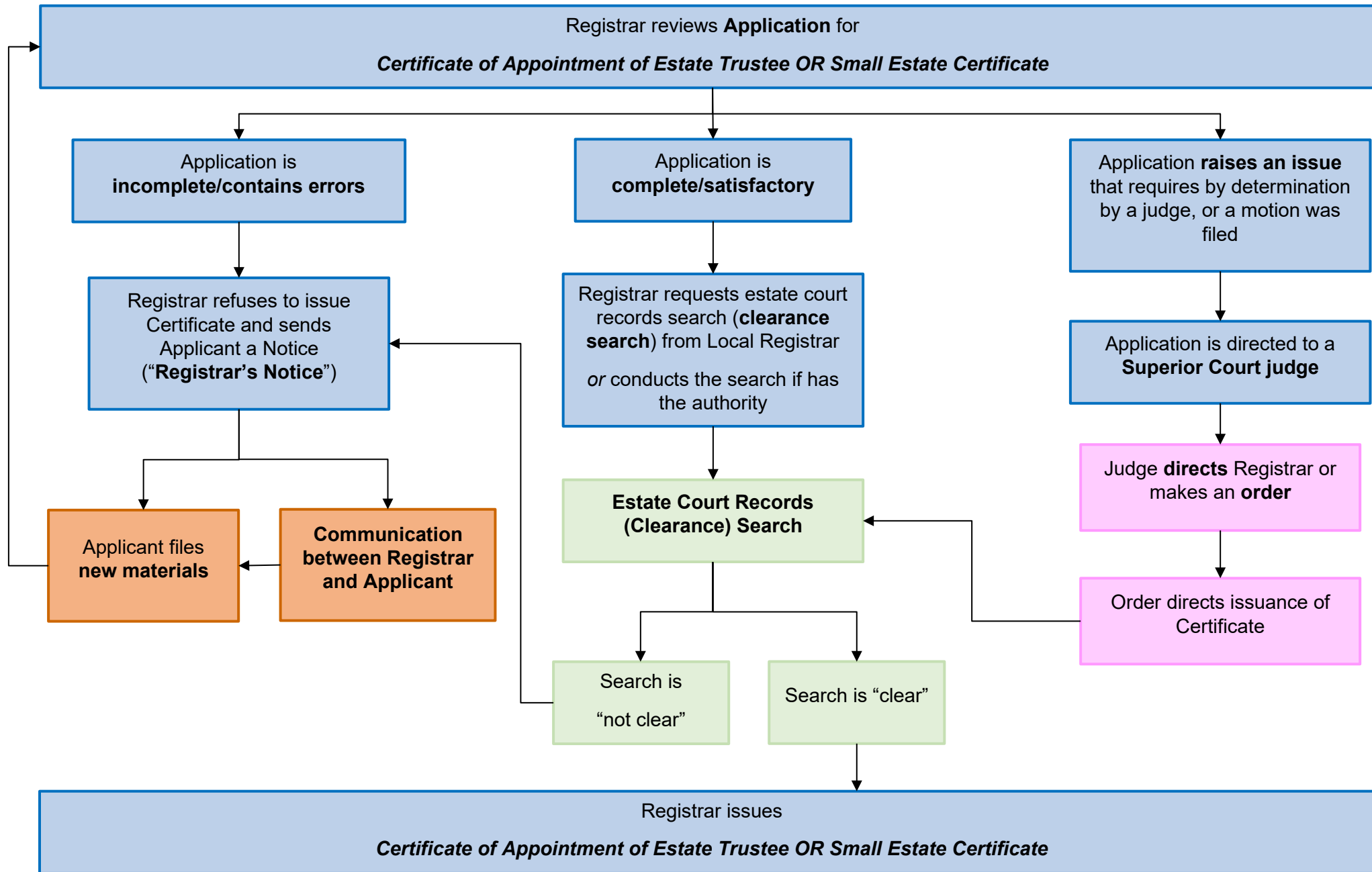
Probate Applications (Applications for Certificate of Appointment of Estate Trustee, Applications for Small Estate Certificate and Applications for Amended Small Estate Certificate) are processed by Estate Court registrars in the Superior Court of Justice.

The main steps in the processing of Applications are set out in flowcharts within this section.

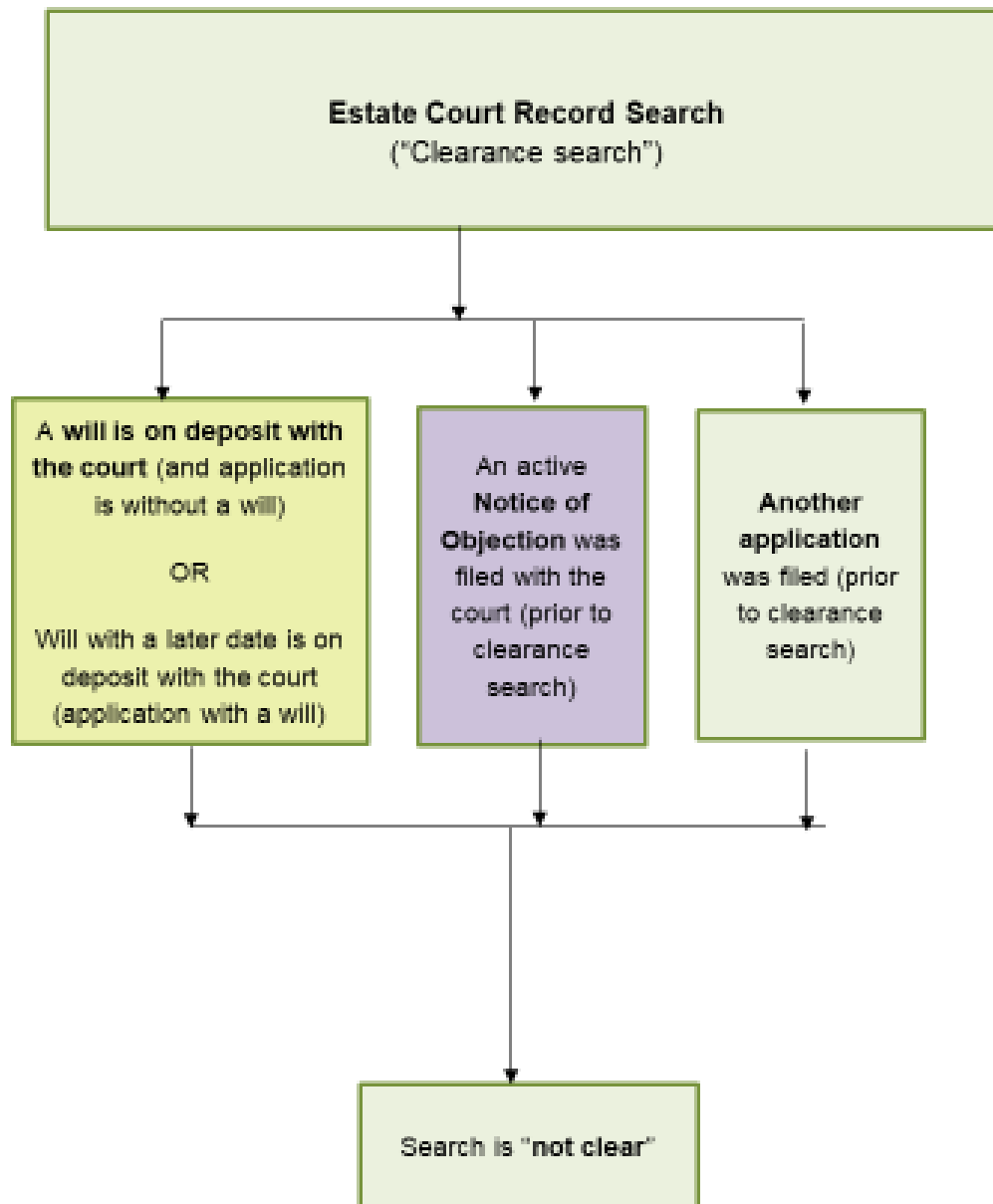
## 2.1 Receipt of probate Application package



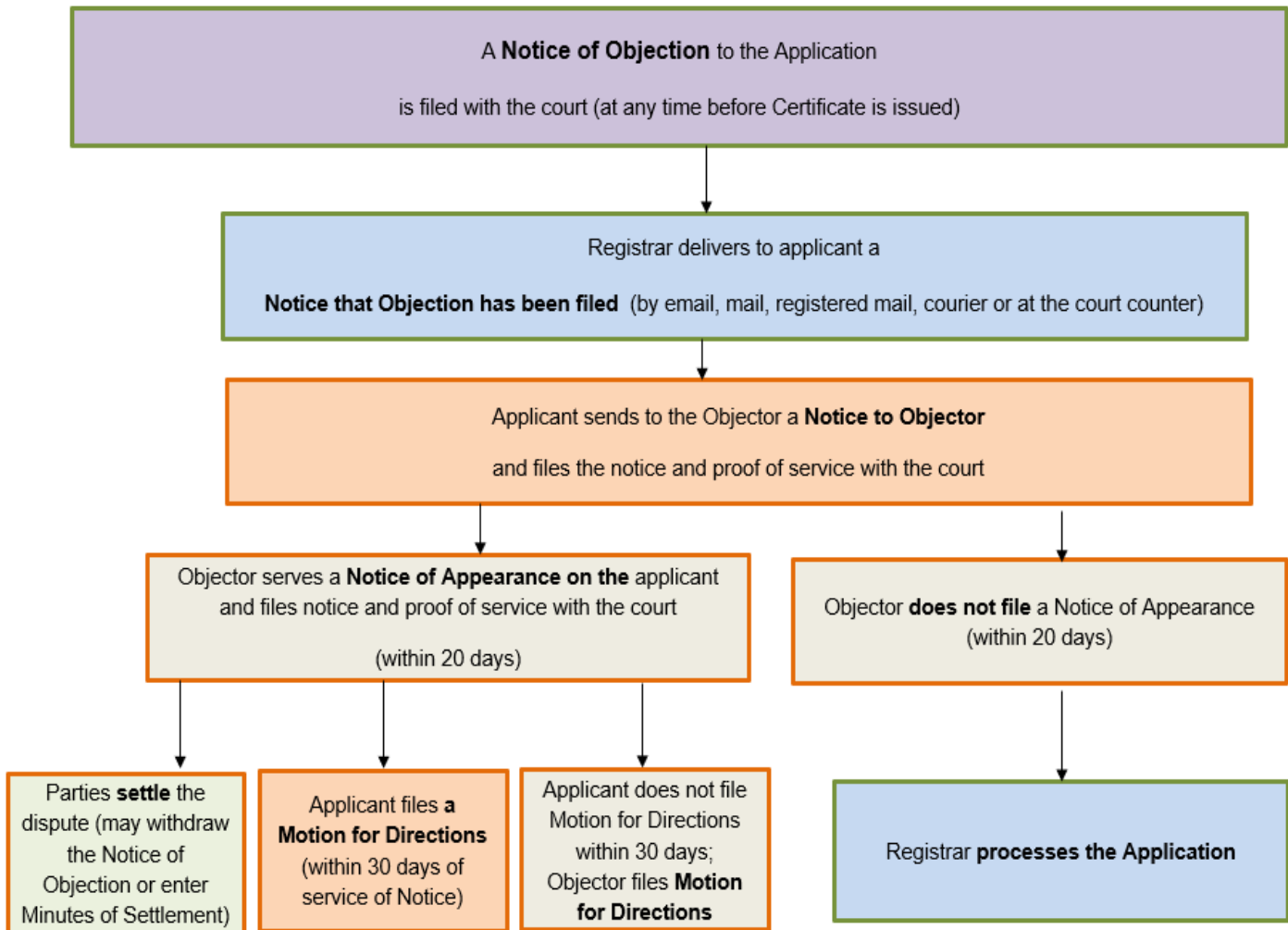
## 2.2 Review of probate Application



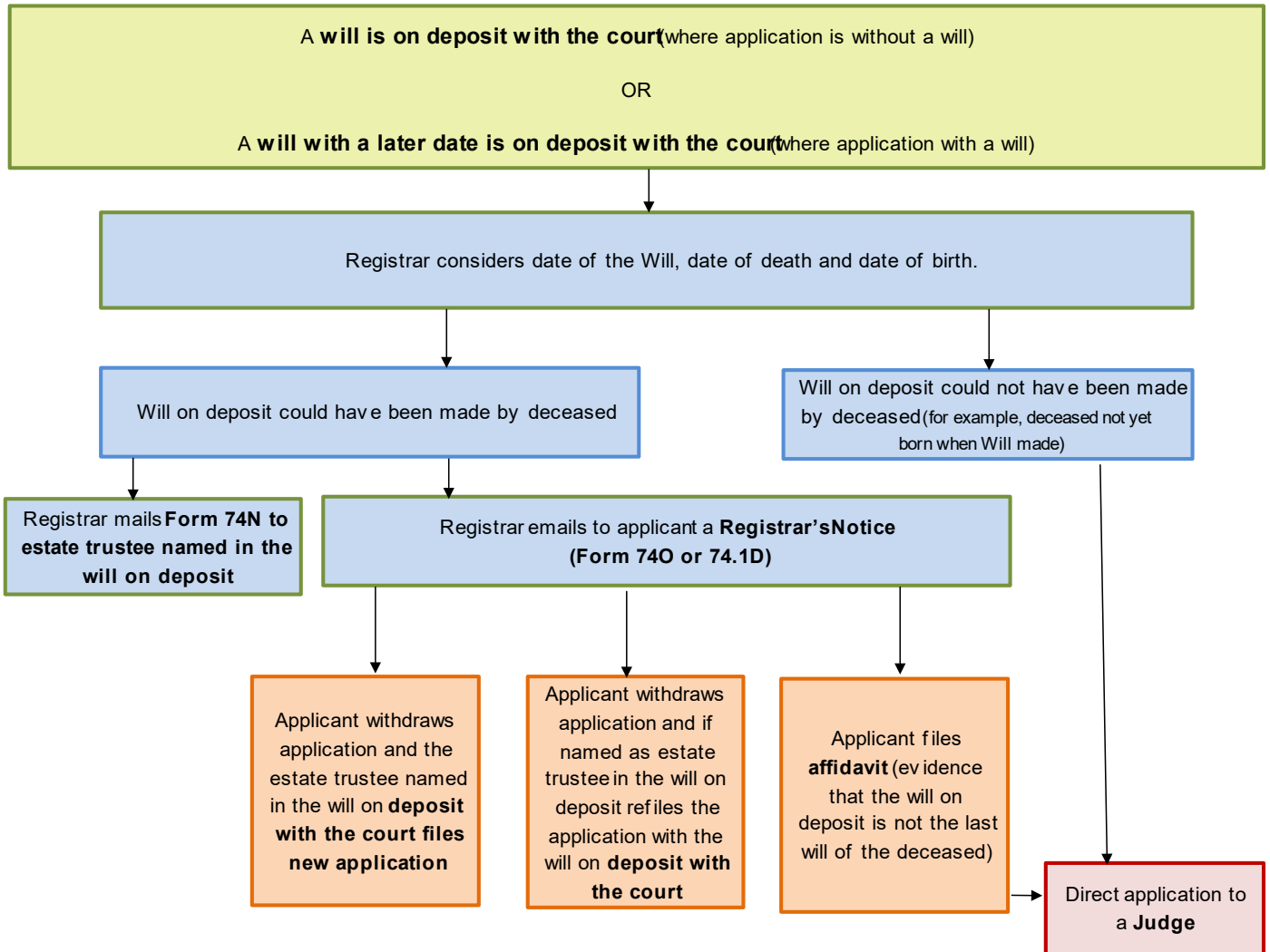
## 2.3 Estate court records search



## 2.4 Notice of Objection



## 2.5 Will on deposit with the court





## Section 3. Receipt of Application Package

### 3.1 Filing Methods

#### 3.1.1 Was a probate Application filed?

An Application for a Certificate of Appointment ([Form 74A, 74.1A, 74J or 74.1E](#)) can be filed with the Superior Court of Justice at the court office, by email, mail, registered mail, courier or in person.

##### 3.1.1.1 In person filing

An Application for a Certificate of Appointment may be filed at the SCJ estates office (or civil counter in most court locations) during regular court office hours.

##### 3.1.1.2 Mail or Courier filing

An Application for a Certificate of Appointment can be filed by mail, registered mail, or courier.

##### 3.1.1.3 Email filing

An Application for a Certificate of Appointment and supporting documents or responding documents (Notice of Objection) can be filed by email to the appropriate Superior Court of Justice court location (email addresses are set out below).

Applications that are filed by email must include an Information Form. See [Section 5.5](#) for more information on electronic filings.

Responding documents (Notice of Objection) and Requests for Notice of Commencement of Proceeding can also be filed by email.

**Table 3. Email addresses of estate court offices**

CSD REGION	LOCATION	EMAIL
North east	Sudbury	sudburyestates@ontario.ca
	Gore Bay	gorebayestates@ontario.ca
	North Bay	northbayestates@ontario.ca
	Parry Sound	parrysoundestates@ontario.ca
	Elliot Lake	[File in Sault Ste. Marie]
	Sault Ste. Marie	ssmestates@ontario.ca
	Timmins	[File in Cochrane]
	Cochrane	cochraneestates@ontario.ca
	Haileybury	haileyburyestates@ontario.ca
Central East	Barrie	barrieestates@ontario.ca
	Bracebridge	bracebridgeestates@ontario.ca
	Orillia	[File in Barrie]
	Cobourg	Cobourg.court@ontario.ca
	Durham (Oshawa)	durhamestates@ontario.ca
	Lindsay	Lindsay.courts@ontario.ca
	Newmarket	newmarketestates@ontario.ca

<b>CSD REGION</b>	<b>LOCATION</b>	<b>EMAIL</b>
	Peterborough	peterboroughestates@ontario.ca
<b>Central West</b>	Brampton	Scj.estates@ontario.ca
	Brantford	brantfordscjcourt@ontario.ca
	Burlington	[File in Milton]
	Cayuga	Haldimandcountycourt@ontario.ca
	Hamilton	hamiltonestates@ontario.ca
	Milton	Halton.estates@ontario.ca
	Orangeville	orangevillescjcourt@ontario.ca
	Simcoe	Simcoe.scj.courts@ontario.ca
	St. Catharines	stcatharinesestates@ontario.ca
	Welland	wellandestatesdepartment@ontario.ca
<b>North West</b>	Dryden	[File in Kenora]
	Kenora	Courts.kenora@ontario.ca
	Fort Frances	Courts.fortfrances@ontario.ca
	Red Lake	[File in Kenora]
	Sioux Lookout	[File in Kenora}
	Thunder Bay	Csd.thunderbay.scj@ontario.ca
<b>East</b>	Cornwall	Estates.cornwall@ontario.ca
	Ottawa	Ottawa.estates@ontario.ca
	Belleville	Bellevillepicton.estates@ontario.ca
	Picton	Bellevillepicton.estates@ontario.ca
	Brockville	Brockville.scj.courts@ontario.ca
	Perth	Perth.scj.courts@ontario.ca
	Pembroke	pembrokeestates@ontario.ca
	L'Orignal	lorignalcivilsccdivision@ontario.ca
	Kingston	kingstonestates@ontario.ca
	Napanee	napaneeestates@ontario.ca
<b>Toronto</b>	330 University Civil	Toronto.estates.filings@ontario.ca
<b>West</b>	Chatham	Chatham.courthouse@ontario.ca
	Goderich	Goderich.courthouse@ontario.ca
	Guelph	Guelph.scj.courts@ontario.ca
	Kitchener	Kitchenercivil-scc-enforcement@ontario.ca
	London	London.estates@ontario.ca
	Owen Sound	Owensound.courthouse@ontario.ca
	Sarnia	Sarnia.scj.courts@ontario.ca
	St.Thomas	Stthomas.courthouse@ontario.ca
	Stratford	Stratford.courthouse@ontario.ca
	Walkerton	Walkerton.courthouse@ontario.ca
	Windsor	windsorregistrar@ontario.ca
	Woodstock	Woodstock.courthouse@ontario.ca

### 3.1.2 Was a Statement of Claim, Notice of Action, Application or Motion for Directions, Application to Prove a Testamentary Document, Motion for an Order for Assistance or Application to Pass Accounts filed?

#### 3.1.2.1 In person filing

These types of actions, applications and motions involving an estate may be filed at the SCJ estates office or civil counter in most court locations during regular court hours.

#### 3.1.2.2 Mail or Courier filing

These types of actions, Applications and motions can be filed by mail, registered mail, or courier

#### 3.1.2.3 Civil Claims Online and Civil Submissions Online filing

Documents to commence an action or application involving an estate or respond to certain estate claims, applications or motions can be filed electronically with the court through the “Civil Claims Online” portal or “Civil Submissions Online” portal of the Justice Services Online platform.

The estate litigation documents that can be filed through the Civil Claims Online portal include:

- Statement of claim
- Notice of action
- Affidavit of Service

The estate litigation documents that can be filed through the Civil Submissions Online portal include:

- Application to pass accounts
- Application or motion for directions
- Application to prove a testamentary document or for revocation or return of certificate
- Motion to compel an estate trustee or trustee to pass accounts or seeking another type of order for assistance under r. 74.15
- Application to remove estate trustee, challenge a will, will interpretation, dependant’s support etc.
- Submission of rights to the court
- Estates mediation documents for mandatory mediations conducted pursuant to rule 75.1 of the *Rules of Civil Procedure*
- Memo to Court Staff regarding a submission/request for electronic filing or issuance

See [Section 3.4.3](#) for direction on assigning a court file number to these proceedings and [Section 14](#) for direction on how to process contentious proceedings documents.

## 3.2 Jurisdiction

The Ontario Superior Court of Justice has jurisdiction to accept and determine Applications for Certificate of Appointment of Estate Trustee [s. 7 [Estates Act](#), s. 11 [Courts of Justice Act](#)].

Where the deceased resided in Ontario at the time of death, an Application for a Certificate of Appointment is to be filed in the court office of the court located in the county or district where the deceased had their “fixed place of abode” [s. 7(1) [Estates Act](#)].

Where the deceased had no fixed place of abode in Ontario, or resided out of Ontario at the time of death, but died owning real estate or personal property in Ontario, the Application is to be filed in the court office of the court located in the county or district where the property is situated. If the deceased died owning property in more than one county, the Application can be filed in any of the counties where the property is located [s. 7(2) [Estates Act](#)].

Where the deceased had neither a fixed place of abode in Ontario nor any assets in Ontario, the Application may be filed in any court office of the court in Ontario [s. 7(3) [Estates Act](#)].

If an applicant commences a probate application in an SCJ court location that does not have jurisdiction, the court may, on its own initiative or on any party’s motion, order that the proceeding be transferred to the county where it should have been commenced under Rule 13.1.02(1). See [Section 3.2.1.1](#) for more information regarding court files transferred to another court location pursuant to a court order.

Other types of estate applications, for example an application for directions under rule 75.06, may be filed at any courthouse [r. 13.1.01]. In any event, a responding party may move to transfer the proceeding under Rule 13.1.02(2). See [Section 3.2.3](#) for more information.

### a. Finding an estate court location

An estates court user can find estates court locations by using the Ministry’s Index of Court Locations at: [Ontario court locations, service hours and contacts](#). The Index can be used to select the place where the deceased lived or, if they were not living in Ontario when they died, the place where the deceased’s property is located.

### b. Probate applications for estates of Indigenous persons

The Superior Court of Justice does not have authority to decide an Application for a Certificate of Appointment where an Indigenous person was ordinarily resident on a reserve. “*Ordinarily resident*” on a reserve is defined as an eligible First Nations person who usually lives on a reserve and doesn’t have a primary residence off a reserve, subject to exclusions such as attaining education or care and services unavailable on a reserve. For these deceased persons, the appointment of an estate trustee is governed by federal law, rather than the Ontario [Estates Act](#) [[Indian Act](#), R.S.C. 1985, c. I-5, ss. 42-52: [Indian Estate Regulations](#), C.R.C. 1978, c.954]. The federal Minister of Indigenous Services has jurisdiction over the estates of such deceased persons. However, this Minister has the power to consent to the Superior Court of Justice exercising jurisdiction over the estate of an Indigenous person, including land on a reserve, and to direct that an estate matter be referred to the Ontario SCJ [[Indian Act](#), R.S.C. 1985, c.I-5, s.44].

Where the deceased Indigenous person ordinarily lived off reserve, then the [Estates Act](#) and [Estates Administration Tax Act, 1998](#) may apply and an applicant would follow Ontario law and court rules to apply for a Certificate of Appointment. However, the Minister of Indigenous Services has the power to direct that the [Indian Act](#) applies to status Indigenous persons who are not ordinarily resident on reserve [[Indian Act](#), R.S.C. 1985, c. I-5, s. 4(3)]. As a result, before the SCJ assumes jurisdiction over these estates, written confirmation from Indigenous Services Canada is required.

Where the deceased is a non-status Indian person who resided off reserve and did not have property on reserve, the Estate Administration Tax payable is calculated on the asset value stated in the Application.

Where the deceased is a status Indian person who:

- 1) resided off reserve and had property off reserve: Estate Administration Tax is payable on the value of that property
- 2) resided off reserve, had property on reserve but that reserve property is being transferred to another status Indian, Estate Administration Tax is not payable on the value of that property.

Where an applicant has questions about the Estate Administration Tax payable for an Indigenous deceased's estate, refer them to Indigenous Services Canada:

Email: [aadnc.estates-successions.aandc@canada.ca](mailto:aadnc.estates-successions.aandc@canada.ca).

Website: [Estate services for First Nations page on the government of Canada website.](#)

### 3.2.1 Was the probate Application filed in the proper court location?

Review the Application (Form 74A, 74J or 74.1A).

Determine Part 1 “Information about the Deceased” answers to “deceased resided in Ontario” and “deceased owned property in Ontario”.

Date of Death	Place of death	Deceased resided in Ontario	Deceased owned property in Ontario (real estate and/or personal property)	Date of Birth	Last occupation
[DD/MM/YYYY]		[Yes/No]	[Yes/No]	[DD/MM/YYYY]	

Review the address identified for the deceased and confirm that it is consistent with the content in the “Deceased resided in Ontario” field.

Review Part 8 – Declarations to determine the reason the application is being filed in your court location.

The application will be filed in the court location at *(insert court location)* because that is the county or district in which:

the deceased resided in Ontario at the time of death

- the deceased owned real estate or personal property (since the deceased did not have a residence in Ontario or resided out of Ontario at the time of death)
- other (*Explain*): \_\_\_\_\_

Take the action set out in [Table 4](#) below.

**Table 4. Determining proper court location**

Deceased resided in Ontario	Deceased owned real estate and/or personal property in Ontario (1)	Deceased's address is in the county or district of your court location	Tax payment or court filing fee has been processed or original will/codicil was filed	Action
Yes	Yes	Yes		<p>Process Application.</p> <p>It is not necessary to confirm that the personal property identified in Part 4 is located in Ontario. The personal property can be located outside of Ontario. The real property must be located in Ontario. For more information see Ministry of Finance's <a href="#">online guidance</a> on valuing an estate.</p>
Yes	n/a	No	No	<p>Do not accept application for filing. Send filer an email or letter indicating (or advise if at the counter) that:</p> <p><i>The Application was not submitted for filing in the court, county or district where the deceased resided. <b>Your documents have not be filed with the court.</b> You may file your Application with the court at XX (insert proper court location) as required by the Estates Act, s.7(1).</i></p> <p>Document any applications where a filing was refused for the above reason on your court's local tracking sheet of refusals of probate applications for lack of jurisdiction. This tracking document should include:</p> <ul style="list-style-type: none"> <li>- name of estate</li> <li>- application type; and</li> <li>- date of notice of refusal to accept documents for filing and method (email, letter or advised in person)</li> </ul> <p>If the tax payment or an original Will/Codicil is received after the probate application has been refused for filing due to jurisdiction (for example, the application was submitted by email and the payment or original Will/codicil were sent to the court by mail), contact the filer to arrange for pickup of the tax payment or original Will/Codicil. Any payment and/or original Will should <u>not</u> be sent back to the filer by mail.</p>
Yes	n/a	No	Yes	Process application.

Deceased resided in Ontario	Deceased owned real estate and/or personal property in Ontario (1)	Deceased's address is in the county or district of your court location	Tax payment or court filing fee has been processed or original will/codicil was filed	Action
				<p>The application is considered filed and may not be returned unless otherwise ordered by a Judge.</p> <p>If the wrong tax amount was paid or the application was filed in the wrong court location, send a Registrar's Notice to Applicant (see <a href="#">Section 9</a>) which states as follows:</p> <p><i>The Application and tax payment was filed in the wrong court county or district. The application may be filed with the court at XX (insert proper court location) where the deceased resided as required by the Estates Act, s.7(1).</i></p> <p><i>If you wish to seek an order transferring the court file under r. 13.1.02(1) and an order crediting the tax payment made, you must file motion materials pursuant to rule 37 of the Rules of Civil Procedure.</i></p> <p><i>If you wish to withdraw your application and seek a refund of the estate administration taxes paid, you may file:</i></p> <ul style="list-style-type: none"> <li><i>a. written request that the application be withdrawn; or</i></li> <li><i>b. notice of abandonment, together with proof of service (there is no prescribed form for a notice of abandonment), pursuant to Rule 38.08 of the Rules of Civil Procedure.</i></li> </ul> <p>Upon the filing of a written request or notice of abandonment, immediately process a revenue refund request for the Estate Administration Tax deposit payable to the payee of the tax deposit. Court filing fees cannot be refunded. See <a href="#">Section 4.5.3</a> for more information on requesting a full refund of the tax payment on the basis that the application was withdrawn.</p>
No	Yes	n/a		Process Application
Yes	No	Yes		Process Application.



Deceased resided in Ontario	Deceased owned real estate and/or personal property in Ontario (1)	Deceased's address is in the county or district of your court location	Tax payment or court filing fee has been processed or original will/codicil was filed	Action
				In this situation, where the answer is "no" to owned real and/or personal property in Ontario, yet there are assets listed in Part 4 of the application, you can proceed with processing the application and do not require further information about the location of the assets.
No	No	n/a		Send Registrar's Notice to Applicant (see <a href="#">Section 9</a> ) which states as follows:  <i>The application indicates that the deceased did not reside in Ontario and the deceased did not own real estate or personal property in Ontario. Please provide the reason that this application has been commenced in the Ontario Superior Court of Justice.</i>

3.2.1.1 Was a requisition filed to transfer the filed documents to another court location pursuant to a court order?

An applicant may request the transfer of a probate application or other estate application to another court, where:

- a. a court order is made to transfer the court file to another court location or
- b. a probate application was filed, the tax payment was processed and an original will/codicil (if any) was filed

Where such a request is made, ensure that the applicant has filed:

- 1) Requisition (Form 4E) together with the prescribed fee payable
  - a. The filing fee is for “the making up and forwarding of papers, documents and exhibits” in accordance with the [SCJ Schedule of Fees](#) (see [Table 6](#) for court fees for document filings, copies, commissioning, file inspection and transferring).
- 2) Court Order permitting the transfer

Upon filing the Requisition ([Form 4E](#)) and payment of the prescribed fee, you should forward the documents to the other court location [[r. 4.10\(1\)](#)].

To send a document to another court location, prepare a [Transmission of Documents](#) cover sheet which explains the reason the material is being sent to the other court.

- Send paper documents by authorized courier together with the completed [Transmission of Documents](#) cover sheet.
- Send electronic documents using [Enterprise Attachment Transfer Service](#) (EATS) making sure to include any electronic documents from your local OneDrive, P: drive, etc. that would have been stored/shared according to your court location’s local practice.

When transferring a file, you must ensure that the entire file (both electronic and paper documents), are sent to the receiving court with copy of the Requisition ([Form 4E](#)) and any supporting documents for transmission. Staff must include a receipt for tax payments/filing fees, if any, that have been paid.

Transferring of filed court documents is only done by court staff. You cannot release documents to the applicant/applicant’s lawyer for the purposes of a transfer.

For probate applications that you are transferring in accordance with a court order, take the following steps:

- Enter a note in the “Notes” tab of the file in the Estates System and indicate:

- the terms of the court order date
- the manner by which you transferred the file; and
- the date in which the file was transferred and court location the file was transferred to.
- Mark the file as Withdrawn in the Estates System

If you are the Registrar at the receiving court location take the following steps:

- enter all details of the application into the Estates System.
  - Record as the “Received Date” the date the application was received from the transferring court location.
- record any taxes paid to the originating court location in the “Asset Transaction” tab; and
- Enter a note in the “Notes” tab of the file and indicate:
  - court location the file was transferred from
  - the terms of the court order and whether any tax payment or filing fees were paid.

For other estate applications transferred in accordance with a court order which are recorded in FRANK, refer to the [FRANK Approved Practices](#).

### 3.2.2 Was the deceased Indigenous?

Review the Application [[Form 74A, 74J or 74.1A](#)].

Determine if the Application suggests that a deceased person was Indigenous and residing on a reserve at the time of their death or had property on a reserve.

If the answer is “No”, process the Application.

If the answer is “Yes”, send the applicant a Registrar’s Notice (see [Section 9 “Registrar’s Notice to Applicant”](#)) indicating that the Application materials appear to indicate that the deceased person:

- a. was ordinarily resident on a reserve. As a result, the Superior Court of Justice does not have jurisdiction to appoint an estate trustee of the deceased’s estate. You may wish to contact Indigenous Services Canada (ISC) for assistance with determining who should look after the estate. Email address: [aadnc.estates-successions.aandc@canada.ca](mailto:aadnc.estates-successions.aandc@canada.ca). Website: [Estate services for First Nations page on the government of Canada website](#).

OR

- b. appears to be Indigenous or had property on a reserve. Please file a letter from Indigenous Services Canada confirming that it is not exercising its statutory obligations and responsibilities in relation to the deceased’s estate and does not oppose the Ontario Superior Court of Justice assuming jurisdiction over matters relating to the estate.

If the answer is unclear, send the Application to a Judge for determination (see [Section 10 “Judicial Determination”](#)).

### 3.2.3 Was a contentious Application relating to the same estate filed in the proper court location?

A contentious estate Application can be commenced at any Superior Court of Justice location in accordance with [R.13.1.01](#). This includes an Application for Directions, Application to Prove a Testamentary Document and Application to Pass Accounts.

If the parties have a reason why the matter should be heard in another court location, they may seek a transfer under [R.13.1.02](#).

### 3.2.4 Where should an appeal be commenced?

Appeals from final orders and judgments in estate proceedings brought under the [Estates Act](#), which are tried in the Superior Court of Justice, are to be taken to the Divisional Court [s. 10 [Estates Act](#)].

An appeal lies to the Court of Appeal from an order of the Divisional Court, with leave, on a question that is not a question of fact alone [s. 6(1)(a) [Courts of Justice Act](#)].

## 3.3 Recording Probate Application Information in the Estates System

Upon receipt of an Application for a Certificate ([Form 74A](#), [74.1A](#), [74.1E](#)), details regarding the Application must be entered into the Estates System and a court file number must be assigned [See [Section 3.4 Assigning a Court File Number](#) for more information on file number assignment]. The data that must be recorded is contained in the Application form and supporting documents.

### 3.3.1 How should the Application information be recorded in the Estates System?

- 1) From the main page of the Estates System, hover over ‘Documents’ and select ‘Application’. Press ‘Add’ and then insert details regarding the Application.
- 2) Under the ‘Application Tab’, record the Court file number assigned to the Application [see [Section 3.4.1 “How should a court file number be assigned”](#)] and fill in the required information in the Status area. Record data in all fields that require data (do not leave any blank unless the information is not available from the Application material).
- 3) Record information about the deceased, including the name of the deceased and any alternate names. Ensure that the names are spelled properly in the Estates System. The names must be identical to the names set out in the Application.
- 4) Record the Dates of each testamentary document (Will and all Codicils, if any). Record dates in the format DD-MM-YYYY.

Deceased Particulars

First Given Name:\*    Second Given Name:    Third Given Name:    Surname:\*

Address:\*    City:\*    Postal Code:    Last Will Date:

Occupation:\*    Date of Death:\*    Date of Birth:    Codicil 1 Date:

Codicil 2 Date:

5) Select the 'Trustee' tab at the top of the screen. Record the data in the Application form about the applicant (the person who is applying to act as the estate trustee) in this tab.

Application \*    **Trustee**    Filer    Asset Transaction    Notes

6) Ensure that all data recorded in the Estates System is accurate. The data must properly reflect the information in the Application material. The data entry is critical to the integrity of the data and affects the automated searches that are conducted by the system. Double check that all data recorded is identical to the information contained in the Application.

7) Press 'Save'.

8) Follow the steps to record the location and status of an Application ([Section 3.3.2 "How should the location and status of an Application be recorded"](#)).

### 3.3.2 How should the location and status of an Application be recorded?

The Estates System Application tracking feature allows the recording of the location and status of Applications in the system, and must be used to record and track a file's current location status.

On the receipt of an Application and/or documents in support of an Application:

- 1) select the Application tracking feature;
- 2) record the file location (for example, "On site"); and
- 3) record the date received.

When sending a Registrar's Notice (see [Section 9 "Registrar's Notice to Applicant"](#)) to an applicant:

- 1) record as the file location "Client for Correction";
- 2) record the date it was sent; and
- 3) make notes detailing the reason the notice was sent.

When the revised Application or additional materials are received from the client (a response to the Registrar's Notice):

- 1) create a new entry in the Application tracking tab; and
- 2) it should default to *On site* and populate the date received.

When sending an Application to a supervisor or to a Judge:

- 1) record as the file location "*Judge*"; and
- 2) record the date the file was sent to the Judge.

When the Judge returns the file to the estates office:

- 1) create a new entry in the Application tracking tab; and
- 2) it should default to *On site* and populate the date received.

When individual Applications are retrieved/sent to the retention centre:

- 1) record the file location in the system as "*Retention Centre*"; and
- 2) record the date the file was sent.

However, where a calendar year's worth of Applications are sent to archives, staff are not required to update each specific file, but should defer to local record retention keeping practices.

### 3.3.3 How should an "Action Required" alert be addressed?

On recording the new file information in the Estate System or saving information about an Application, the system may generate an alert that says:

**"ACTION REQUIRED: You must send a notice as appropriate"**

This alert is generated by the system because one of the following documents was filed with the court:

- i. Notice of Objection [[Form 75.1](#)];
- ii. Later Will on deposit, or a Will is on deposit and the Application is without a Will;
- iii. Request for Notice of Commencement of Proceeding [[Form 74P](#)];
- iv. Another Application filed in respect of the estate.

If you receive this alert, you must immediately (on the same day you received the alert) take the following action:

- 1) Review the documents that were filed and information in the Estates System
- 2) Generate the required form by selecting the appropriate button:

- i. If [Form 75.1](#) was filed, select Notice that Objection Has Been Filed [\[Form 75.2\]](#)
  - ii. If a later Will is on deposit or a Will on deposit and the Application is without a Will select Registrar's Notice to Estates Trustee Named in a Will or Codicil Deposited with the Court [\[Form 74N\]](#)
    - consider the date of the Will that is on deposit with the Court and the date of the deceased's birth and date of death. If it is clear that the Will that is on deposit with the Court could not have been made by the testator refer to [Section 7.2.2](#) of this manual for more information and required steps.
  - iii. If [Form 74P \(Request for Notice of Commencement of Proceeding\)](#) was filed, select Notice of Commencement of Proceeding [\[Administrative Form RR-0151\]](#)
  - iv. If another application was filed in respect of the estate, prepare a Registrar's Notice ([Form 74O](#) or [Form 74.1D](#)) completing Part A of the form. Check off the box to indicate that "another application has been filed in respect of the estate". Send the Registrar's Notice by email.
- 3) Save the Form (or print if necessary). Apply your electronic signature to the Form (using Adobe with PKI credentials) or sign by hand, if necessary.
- 4) E-mail the Form to:
- i. For [Form 75.2](#) – email to the applicant/lawyer
  - ii. For [Form 74N](#) – email to the estate trustee named in the Will on Deposit
  - iii. For [Form RR-0-151](#) – email to the Requestor
  - iv. For [Form 74O](#) or [Form 74.1D](#) – email to the applicant/lawyer

Alternative: Mail the form if an email address is not in the court file or the filer was not a lawyer (and email address is not on the Law Society website).

- 5) Save the emailed/mailed Form, in the appropriate OneDrive/SharePoint location (or in the physical court file if the form was mailed).
- 6) Record in the Estates System the date that the Form was sent and the method used to send the form (email or mail). Enter any additional notes in the "Notes" field regarding the action taken.
- 7) Select the "Save Information/Confirm Documents Sent" button in the Estates System once the documents have been sent.

For further steps relating to a Notice of Objection, see:

- [Section 2.4](#) for a flowchart "Notice of Objection"; and
- [Section 14.1 "Notice of Objection to Issuance of a Certificate"](#).

For further steps relating to Wills on Deposit, see:

- [Section 2.5](#) for a flowchart “Will on deposit with the court”
- [Section 7.2.2 Does estate court record search reveal that a later Will is on deposit with the court?; and](#)
- [Section 7.2.3 Does estate court record search reveal that a Will is on deposit and the Application is without a Will?](#)

### 3.4 Assigning a Court File Number

You must assign a court file number for all new Applications..

If an application package is missing a document that is required to be filed, accept the application for filing and send a Registrar’s Notice indicating the documents which are missing and required for the application to be reviewed and indicate that the court file number should be stated on the material when it is filed.

You should not return a mailed application or original will or codicil to a filer on the basis that supporting documents are missing or the application is missing information. A court file number should be assigned to the application and the applicant notified of the issues through a Registrar’s Notice. See [Section 9.6 - Amendments to filed applications and/or supporting documents prior to issuance of a Certificate](#) and [Section 19.1 - Maintain original Wills, Applications, Affidavits and supporting documents](#).

There are limited circumstances in which an application and supporting documents can be refused for filing. Do not refuse to accept an application for filing unless you are authorized to do so by [Directive 2022/08 - Electronic document filings](#) or a specific provision of this manual. An Application for a Certificate of Appointment ([Form 74A](#), [74J](#), [74.1A](#) or [74.1E](#)) is not required to be issued by court staff, unlike other types of Applications [see [R. 14.01\(2.1\)](#)].

#### 3.4.1 How should a probate Application file number be assigned?

To assign a court file number to a probate Application, follow local court practice.

The next available file number should be assigned in order to ensure that Applications are processed in the order of receipt.

#### 3.4.2 How should a probate Application file number be communicated?

For Applications for a Certificate of Appointment that are submitted by email, notify a filer of the court file number **within 5 business days** of the filing of the Application. Notify them of the file number by email. For the email message that you should send out, see [Section 5.5 “Applications filed by email”](#).

If the Application is submitted for filing by mail, courier or at the court counter, the file number will be communicated to the Applicant on either a Certificate of Appointment or a Registrar’s Notice.

You must record the complete file number on these documents and all court documents.



Example: Court File number assigned is 2021-999. The file number must be written as 2021-999 on all documents including the Certificate of Appointment. Do not record the file number as 21-999 or 999/21 or in any other format.

### 3.4.3 How is a civil court file number assigned for a contentious estates proceeding?

Where the estates document filed is an estates action (Statement of Claim or Notice of Action) or an estates motion or application (other than a probate application), a 14-digit civil court file number is assigned in the FRANK system to the proceeding. The extension code “00ES” should be used for civil matters dealing with contentious estates (actions, applications and motions) in accordance with the [FRANK Approved Practices](#). The court file number assigned to a probate application or certificate must not be used. Similarly, the court file number assigned to another proceeding involving the same estate or associated with a previous application to pass accounts that was resolved by court order must not be used.

As set out in [Section 3.1.2](#), documents to commence or respond to certain estate actions, applications or motions can be filed with the court through the “Civil Claims Online” portal or “Civil Submissions Online” portal of Justice Services Online or in person at the court counter. Where the documents are filed electronically, the civil court file number assigned is a 14-digit civil court file number assigned in the FRANK system to the proceeding, with the extension code 00ES if the filer chose “estates” as the matter type.

## 3.5 Digital Signatures

### 3.5.1 Digital Signatures on Probate Applications, Affidavits and other Court Forms

Probate applications can be filed with the court by email. Other types of estate applications and motions can be submitted for filing electronically through Civil Submissions Online, hosted on the Justice Services Online platform.

Where court forms are submitted to the court electronically through one of these filing methods, the form can contain an electronic signature as set out below.

You should accept for electronic filing probate applications (Forms 74A, 74J, 74.1A and 74.1E) and Affidavits (74B, 74B.1, 74D, 74E, 74F), Renunciations and Consents (74G and 74H dated September 1, 2021 or Form 74G dated November 1, 2023) that are signed digitally where the digital signature is a:

**a. certificate-based digital signature**

i.e., a mark applied using software such as Adobe or DocuSign that bears the signatory’s name, a serial number, and a date, and is verifiable within the electronic document

**b. a scan of a wet handwritten signature**

i.e., scan of a document that was signed by hand using a pen (in PDF, JPEG or similar format)

**c. a non-wet handwritten signature**

i.e., signature generated by hand directly in an electronic document using an electronic stylus, trackpad, touchscreen, etc.

Where the digital signature on a probate application, consent form or affidavit (or another sworn/affirmed court form) is simply a typed name without encryption, it should **not** be accepted for filing.

If you have concerns about the validity of an electronic signature on a court form, you may direct the application to a judge (pursuant to RCP r.74.14(4) or r.74.1.04(4)). An application should not be directed to a judge solely on the basis that it contains a digital signature. Before sending an application to a judge, you may wish to:

- compare the digital signature on the document against the information in the court file; or
- check a certificate-based digital signature (Adobe or DocuSign) for a serial number and date and that it indicates that the document was not altered after signing (double-click on the signature if these details are required).

For more information see: [CSD Notice on Electronic Court Documents: Electronic Signatures and Submissions through Online Filing Portals](#) (April 27, 2022).

### 3.5.2 Digital Signatures on Exhibits to Affidavits and in documents in a Court Record

You should accept for filing:

1. evidentiary documents such as exhibits to affidavits that contain a signature, regardless of the signature format (e.g., a contract or other document that is attached to an affidavit which contains an electronic signature, including a typed signature without encryption).
2. court records (e.g., motion record) containing court forms that were originally signed in encrypted format (for example, in accordance with a) or c) of the acceptable electronic signature formats above) even if the credentials of that signature (the encrypted status) cannot be accessed because the document was merged with other documents in PDF format.

For more information see: [CSD Notice on Electronic Court Documents: Electronic Signatures and Submissions through Online Filing Portals](#) (April 27, 2022).

### 3.6 Remotely Commissioned Affidavits

Affidavits can be sworn/affirmed remotely if the requirements of [Regulation 431/20](#) under the [Commissioners for Taking Affidavits Act](#) are satisfied.

A commissioner administering an oath or affirmation must satisfy themselves of the genuineness of the signature of the deponent or declarant in the manner required by law before signing the jurat or declaration ([Commissioners for Taking Affidavits Act](#), s.9(3)). They must ensure that the affidavit was signed by the person indicated and that any legal requirements for such signatures, including any requirements under the [Electronic Commerce Act, 2000](#), to the extent that it applies, have been satisfied.

You should not refuse to accept electronically signed affidavits solely because they have been electronically signed, unless the signature is simply a typed name on a probate application, consent form or affidavit (see [Section 3.5](#), Digital Signatures and [3.6 Remotely Commissioned Affidavits](#)). Judicial officers are responsible for determining whether a filed document (including the commissioning of an affidavit) meets evidentiary requirements and is admissible as evidence in the proceeding that they are adjudicating.

If you are asked how to commission documents remotely, you must advise that you are not able to provide legal advice. Lawyers and paralegals can be referred to the Law Society of Ontario FAQ: [“How should a lawyer or paralegal virtually commission documents?”](#)

### 3.7 Change in Representation

If an Application for a Certificate of Appointment of Estate Trustee or another application, claim or motion was filed by a lawyer and a new lawyer has been retained, the new lawyer needs to file [Form 15A Notice of Change of Lawyer](#), typically with [Form 16B Affidavit of Service](#) or [Form 16B.1 Certificate of Service](#). The lawyer should also file a new backsheet with their contact info for Form 74C Certificate. A new backsheet for other documents (e.g. Form 74A) would not be required since they were not the filer then.

If the applicant becomes self-represented, the applicant can file a [Form 15C Notice of Intention to Act in Person](#), with an affidavit/letter explaining the circumstances, together with a new backsheet for Form 74C with applicant's contact info.

Where there is a change in representation, update the filer information in Estates System, with a note in the Notes tab regarding whether either Form 15A or 15C was filed and include the name of the original lawyer and date that they ceased to be the lawyer in the application (date the change in representation was filed).

## Section 4. Estate Administration Tax and Document Filing Fees

### 4.01 Estate Administration Tax

Estate Administration Tax must be paid at the time an Application for a Certificate ([Form 74A](#), [74.1A](#) or [74.1E](#), and in some situations [74J](#)) is filed with the court (s. 2(1), [Estate Administration Tax Act, 1998, R. 74.13\(1\)](#)).

Estate Administration Tax is calculated based on the value of the estate at the time of the deceased's death. If the estate value is:

- \$50,000 or less, the tax payable is \$0.
- more than \$50,000, the tax payable is \$0 for the first \$50,000 and \$15 for every \$1,000, or part thereof, of the value of the estate exceeding \$50,000 [s.2(2) [Estate Administration Tax Act, 1998](#)].

A [tax calculator](#) is available on the Ministry of Finance website.

### 4.02 Determining the value of the estate

The “value of the estate” means the value all the property owned by the deceased person at the time of their death, less (minus) the actual value of any mortgage outstanding on Ontario real estate that is included in the property of the deceased [[Estate Administration Tax Act, 1998](#), s. 1, s. 32 of the [Estates Act](#)]. The deceased's debts are not deductible from the value of the assets.

To address any inquiries regarding how to value the estate, you can advise of the [Ministry of Finance's online guide](#) to Estate Administration Tax.

- Do not provide advice regarding which assets should and should not be included in the tax calculation, but rather:
  - direct the applicant to the MOF online guide;
  - indicate that the applicant may wish to consult with a lawyer for legal advice; and
  - indicate that the applicant may contact MOF regarding tax questions.
- For your information only, the Ministry of Finance guide provides the information set out in Table 5.

**Table 5. Estate value for MOF purposes (Form 74A and 74.1A application)**

Assets which MOF directs to be included in estate value	Assets which should not be included in estate value	Expenses, debts and payments which should NOT be deducted to reduce estate value
<p>Real estate located in Ontario, less encumbrances such as a mortgage or lien on that real estate</p> <p>Note: MOF guide indicates that 1) appraised value at date of death should be used even if property sold for more or less; 2) the 'first dealings' exemption for properties that are Land Titles Conversion Qualified has no impact on the Estate Administration Tax. The property value needs to be included in the value of the estate.)</p>	Real estate outside Ontario	Funeral expenses
Bank accounts (includes foreign banks)	Assets owned jointly with another person	Lawyer's fee
<p>Investments</p> <p>(for example, stocks, bonds, mutual funds and investments where there was no beneficiary designation or declaration such as TFSAs, RRSPs, RRIFs that were not designated, part of the RESP that the deceased subscriber was entitled to, RDSPs for which the deceased was a beneficiary)</p>	Assets or plans where there is a beneficiary designation (ie RPPs, RRSPs, RRIFs, TFSAs)	Loans & interest payments
<p>Vehicles and vessels</p> <p>(for example, cars, trucks, boats, ATVs, motorcycles, trailers, etc., situated in or outside Ontario)</p>	RDSPs to which the deceased subscribed but was not a beneficiary	Debts on a vehicle
All property of the deceased that was held in another person's name		Real estate commissions
All other property, wherever located, including goods, intangible property, business interests, insurance, if proceeds are left to the estate		Credit card debts & line of credit
<p>Note these exceptions:</p> <p>1) In a Form 74A Application for a Certificate of Appointment of Estate Trustee with a Will Limited to the Assets Referred to the in Will, only assets included in the specific Will that is sought be probated can be included in the value of the estate.</p> <p>2) In Form 74J Applications that require a tax payment, only assets located in Ontario can be used in the estate value calculation.</p> <p>3) Certain property situated on a Reserve may be exempt from taxation. For questions about whether Indigenous people are exempt from the tax, <a href="#">Ministry of Finance, Compliance Branch</a> should be contacted.</p>		

### 4.03 Determining how the tax should be processed

The Estate Administration Tax must be paid by cash, debit (where available), certified cheque, solicitors/firm trust account cheque, trust company account cheque, or bank draft made payable to the "Minister of Finance." This policy ensures that the court receives payment prior to issuing the estate certificates. Cheques from solicitors' trust accounts, firms' trust accounts, or from trust companies can also be accepted and do not have to be certified as solicitors/firms and trust companies are subject to regulation by professional bodies, which ensure sufficient funds are available for payment of the tax.

Determine the responses to the following questions in the Estate Administration Tax section of the application form (Part 9 of Form 74A, 74.1A or Part 8 of Form 74J):

*(Check one of the following boxes)*

The value of the estate is \$50,000 or less

The value of the estate exceeds \$50,000 and:

I will submit a payment of the estate administration tax deposit together with the application that is submitted for filing with the court.

I am seeking an order to defer the payment of the estate administration tax deposit pursuant to section 4(1) of the *Estate Administration Tax Act, 1998*. I will file with the court, together with the application, a draft order (Form 74I) with a backsheet (Form 4C) and an affidavit with respect to the estate administration tax deposit (Form 4D).

I am seeking to pay the estate administration tax deposit based on an estimated value of the estate pursuant to section 4(3) of the *Estate Administration Tax Act, 1998*. Within six months of the date of filing of this application I will file a sworn statement of the actual total value of the estate and pay any additional tax if the actual value is higher than the estimated value.

If the applicant checks the box to indicate that the value of the estate is \$50,000 or less, record the amount of the tax deposit in the Estates System by following the steps in [Section 4.1 Recording Payments in Estates System](#).

If the applicant checks the box to indicate that they are:

- submitting a payment of the estate administration tax deposit, follow the steps in [Section 4.1 Recording Payments](#).
- seeking an order to defer the payment of the estate administration tax deposit pursuant to section 4(1) of the *Estate Administration Tax Act, 1998*, follow the steps in [Section 4.4 Motion to Defer Tax Payment](#).
- seeking to pay the estate administration tax deposit based on an estimated value of the estate pursuant to section 4(3) of the *Estate Administration Tax Act, 1998*, follow the steps in [Section 4.3 Undertaking Regarding Tax Payment](#).

The probate application Forms 74A and 74.1A include in the Notice to Beneficiaries an explanation that the estate value disclosed in the application does not necessarily reflect the amount that will be available for distribution to beneficiaries.

#### **4.04 Document Filing Fees**

Some Application types have a court document filing fee that must be paid at the time of filing of the application (for example, an Application for a Certificate of Appointment of Succeeding Estate Trustee and an Application for a Certificate of Estate Trustee During Litigation). For these Application types (which use [Form 74J](#)), Estate Administration Tax is not payable and only the required court document filing fee must be paid [[Administration of Justice Act](#), O.Reg. 293/92, s.2(1)1].

The fees for estate court document filings, copies, commissioning and file inspection and transferring are set out at: <https://www.ontario.ca/page/civil-court-fees> and summarized in [Table 6](#). Applicants can request a waiver of a document filing fee. See [Section 18 Fee Waivers](#).

A court fee (established by [O.Reg. 293/92](#)) may be paid by cash, debit (where available), certified cheque or bank draft made payable to the “Minister of Finance” or credit card payment (in person or over the phone). A cheque or bank draft may be delivered by mail, courier or in person at the court counter.

Government of Ontario ministries, agencies/boards and commissions are not required to pay fees prescribed by regulation under the *Administration of Justice Act* (including court fees) with the exception of out-of-pocket expenses (for example, lawyers filing documents on behalf of the Office of the Children’s Lawyer and the Office of the Public Guardian and Trustee, which are offices within the Ministry of the Attorney General, are not required to pay court fees). A list of Ontario ministries may be found at [www.ontario.ca/page/ministries](http://www.ontario.ca/page/ministries) and a list of Ontario agencies, boards and commissions may be found at [www.ontario.ca/page/agencies-boards-and-commissions](http://www.ontario.ca/page/agencies-boards-and-commissions).

Table 6. Court fees for document filings, copies, commissioning, file inspection and transferring as of [Dec. 24, 2022](#)

Document/Service Type	Fee
<b>Document Filing</b>	
Application for Certificate of Succeeding Estate Trustee	\$138
Application for Certificate of Estate Trustee During Litigation	\$138
Application to Pass Estate or Trust Accounts	\$432
Notice of Objection to Accounts	\$93
Application for proof of lost or destroyed will, revocation of a certificate of appointment, directions, filing of a claim, notice of contestation	\$232
Notice of Objection to probate application ( <i>Objection to an Application for a Certificate of Appointment of Estate Trustee or a Small Estate Certificate</i> ), including the filing of a Notice of Appearance (Form 75.4)	\$94
Notice of Appearance ( <i>a response in Form 38A to an application other than a probate application</i> )	\$172
Request for Notice of Commencement of Proceeding	\$94
<b>Other services</b>	
Deposit of Will or Codicil with the Court for Safekeeping	\$28
Assessment of costs, including the Certificate	\$67
Copies of document not requiring certification	\$1 per page
Copies of document requiring certification	\$4 per page
Inspection of a court file by any person other than a solicitor or party in the proceeding or person who entered into a bulk inspection agreement	\$11 per file
Retrieval from storage of a court file	\$83
Taking of an affidavit or declaration by a commissioner for taking affidavits	\$22
Making up and forwarding of papers, documents and exhibits (plus any applicable transportation costs)	\$105.00



## 4.1 Recording Payments in Estates System

An Estate Administration Tax deposit must be paid to the court office at the time of the filing of an Application for a Certificate of Appointment, if the estate value is greater than \$50,000.

### 4.1.1 How is an Estate Administration Tax deposit recorded for a Form 74A or 74.1A Application?

- 1) Determine the “total value of estate” by reviewing Part 5, Value of Estate Assets, in Form 74A or 74.1A:

<b>TOTAL VALUE OF ESTATE \$</b>
(Total value of all real property + Total value of all personal property)

- 2) Determine the amount of Estate Administration Tax paid by reviewing the amount of the certified cheque or bank draft or cash or debit (where available).
- 3) In the Estates System select the file and then select “**Asset Transaction**” tab.
- 4) Record the total estate value in the ‘**Asset Value**’ field.

No.:	Transaction type:	Transaction completed:	Transaction date:	Comply by date:	Complied date:	Asset value:	Tax:	Amount owing:	Amount to be paid:	Amount paid:	Balance:
1	Initial Transaction	Yes	28-OCT-2021			0.00	0.00	0.00	0.00	0.00	0.00

The Estate Administration Tax amount owing will automatically populate based on the estate value entered. The ‘amount to be paid’ will also populate.

No.:	Transaction type:	Transaction completed:	Transaction date:	Comply by date:	Complied date:	Asset value:	Tax:	Amount owing:	Amount to be paid:	Amount paid:
1	Initial Transaction	Yes	28-OCT-2021			100,000.00	750.00	750.00	750.00	0.00

- 5) Record the amount of tax paid in the ‘Amount Paid’ field

Asset value:	Tax:	Amount owing:	Amount to be paid:	Amount paid:	Balance:	Refund:
100,000.00	750.00	750.00	750.00	750.00	0.00	0.00

- 6) If the “Balance” is \$0 (amount owing is the same as the amount paid), process the tax payment and the Application. Issue a receipt for the tax payment by following the steps in [Section 4.1.4](#). How is a receipt issued for a tax payment or document filing fee?
- 7) Overpayments (a payment with a positive “balance” amount) **cannot be accepted**. If the amount paid exceeds the amount owing, send a Registrar’s Notice (see [Section 9 “Registrar’s Notice to Applicant”](#)) and return the entire tax payment to the applicant.

8) Underpayments (a negative “balance” amount) must only be accepted with an undertaking and an Order made under Section 4 of the *Estate Administration Tax Act, 1998*. If an Undertaking is filed, select “Undertaking” and select Add Asset Transaction. The “complied date” field should populate with a date 6 months from the Received Date (do not alter this date unless directed by a Judge to do so). See [Section 4.3](#) for further steps.

#### 4.1.2 How is an Estate Administration Tax deposit recorded for a Form 74J Application?

An Estate Administration Tax deposit is collected for some 74J Applications.

The tax is not collected in a Form 74J Application for the following types of Applications:

- Certificate of Appointment of Succeeding Estate Trustee with a Will
- Certificate of Appointment of Succeeding Estate Trustee with a Will Limited to the Assets Referred to in the Will
- Certificate of Appointment of Succeeding Estate Trustee without a Will
- Certificate of Appointment of Estate Trustee During Litigation

The tax is collected in a Form 74J Application for the following types of Applications:

- Certificate of Appointment of Foreign Estate Trustee’s Nominee as Estate Trustee without a Will
- Confirmation by Resealing of Appointment of Estate Trustee
- Certificate of Ancillary Appointment of Estate Trustee with a Will

In these three types of Applications, review Part 5 of the 74J Application form (reproduced below) to determine the value of the assets located in Ontario (the “total” box in the form section below).

### PART 5 – VALUE OF ESTATE ASSETS

*If applying for a Certificate of Appointment of Succeeding Estate Trustee, only list **undistributed** estate assets.*

*If applying for a Certificate of Appointment of Foreign Estate Trustee’s Nominee as Estate Trustee without a Will, Certificate of Appointment of Estate Trustee During Litigation, Confirmation by Resealing of Appointment or a Certificate of Ancillary Appointment of an Estate Trustee with a Will, only list assets **located in Ontario**.*

Personal Property	Real estate, net of encumbrances	Total
\$	\$	\$

Record in the Estates System the tax deposit collected by following the steps in [Section 4.1.1](#). Issue a receipt for the tax payment by following the steps in [Section 4.1.4](#). How is a receipt issued for a tax payment or document filing fee?

### 4.1.3 How is a document filing fee recorded?

A court document filing fee is required to be collected on the filing of a Form 74J Application seeking one of the following types of Certificates:

- Certificate of Appointment of Succeeding Estate Trustee with a Will
- Certificate of Appointment of Succeeding Estate Trustee with a Will Limited to the Assets Referred to in the Will
- Certificate of Appointment of Succeeding Estate Trustee without a Will
- Certificate of Appointment of Estate Trustee During Litigation

The court document filing fee is required by regulation under the [Administration of Justice Act](#) [O.Reg. 293/92, s.2(1)1]. The document filing fee amounts are set out at: <https://www.ontario.ca/page/civil-court-fees>. Applicants can request a waiver of a document filing fee. See [Section 18 Fee Waivers](#).

Although the Estate Administration Tax is not required to be collected for these Application types, the asset value must still be recorded in the Estates System.

Determine the total estate value for these types of Applications by reviewing Part 5, Value of Estate Assets in Form 74J (reproduced below).

## PART 5 – VALUE OF ESTATE ASSETS

*If applying for a Certificate of Appointment of Succeeding Estate Trustee, only list **undistributed** estate assets.*

*If applying for a Certificate of Appointment of Foreign Estate Trustee’s Nominee as Estate Trustee without a Will, Certificate of Appointment of Estate Trustee During Litigation, Confirmation by Resealing of Appointment or a Certificate of Ancillary Appointment of an Estate Trustee with a Will, only list assets **located in Ontario**.*

Personal Property	Real estate, net of encumbrances	Total
\$	\$	\$

For Applications for a Succeeding Estate Trustee or Estate Trustee During Litigation take the following steps:

- 1) In the Estates System, select the Application tab. Record the total estate value in the “Asset Value” field. The fee owing will populate below the asset value.
- 2) Record the ‘total’ value in the Estates System in the ‘Asset Value’ area located at the bottom left of the screen.

Asset Value:*	0.00
Fee Paid:	

The document filing ‘fee paid’ will be automatically populated to reflect the amount owing and should not be changed.

- 3) Ensure that the “Fee Paid” that is calculated as payable by the Estates System matches the amount of the fee that was actually paid.
- 4) If the document filing fee paid was the correct amount, process the document filing fee payment by issuing a receipt. See [Section 4.1.4](#) How is a receipt issued for a tax payment of document filing fee payment?

#### 4.1.4 How is a receipt issued for a tax payment or a document filing fee?

In accordance with the [Manual of Financial Administration](#), you must issue a receipt for any payment of estate administration tax or payment of a document filing fee .

Include the following information in the detailed paper receipt of the payment:

The Superior Court of Justice at (court location) confirms the receipt of a (insert application type here) and the (insert payment type) payment in connection with the application for the estate of:

- Deceased Name:
- Court File Number:
- Estate Administration Tax received in the amount of: \$
- (insert if applicable: Document filing fee received in the amount of \$ )

Place a copy of the detailed receipt in the court file along with the cash register receipt.

For the process to provide a receipt of a tax payment or filing fee payment where the application was filed by email, see [Section 5.5](#) Applications filed by email.

## 4.2 Value of estate assets is “nil” or nominal

Where a filed Application indicates a “nil” value of assets or where the value is stated as nominal, the applicant should provide an explanation. The applicant can attach a schedule to their Application to explain the nil or nominal asset value (schedule is sworn/affirmed as part of the Application).

Where no schedule is provided as part of the Application in these circumstances, send a Registrar’s Notice to the Applicant or filer (see [Section 9](#)) advising that:

- 1) a “nil” or nominal estate value was indicated by the Applicant and no explanation was provided (or an insufficient explanation was provided) for the nil (or nominal) value; and
- 2) an affidavit is required setting out the true value of all of the deceased’s assets, subject to exceptions, as provided in the [Estates Act](#) and the [Estates Administration Tax Act, 1998](#) or the reasons must be provided for the nil/nominal value.

## 4.3 Undertaking Regarding Tax Payment

If an applicant is uncertain of the true estate value at the time of their Application, they should check the following box on the Application (Part 9 of Form 74A, 74.1A or Part 8 of Form 74J - Estate Administration Tax):

I am seeking to pay the estate administration tax deposit based on an estimated value of the estate pursuant to section 4(3) of the *Estate Administration Tax Act, 1998*. Within six months of the date of filing of this application I will file a sworn statement of the actual total value of the estate and pay any additional tax if the actual value is higher than the estimated value.

When this box is selected, the applicant is:

1. required to pay the estate administration tax based on the estimated value of the estate set out in the application [section 3(3)(4), [Estates Administration Tax Act, 1998](#)]
2. undertaking to file a sworn/affirmed statement of the actual value of the estate within six months of the date of the filing of the application and to pay the additional tax owing, if any, pursuant to s. 4(3) [Estates Administration Tax Act, 1998](#) [R.74.13(2)(a)(b)]. This undertaking is being made as part of the application, which is a sworn/affirmed document.

If this box is selected, it is no longer necessary to seek a separate undertaking letter from the applicant regarding the estimated value of the tax.

Some applicants indicate the word “estimated” beside the value of the estate on the Application form. If the word “estimated” is not indicated on the Application form, do not reject the Application. By checking the above box the applicant is indicating that the estate value disclosed is an estimated amount.

The data contained in an undertaking must be recorded in the Estates System at the time the information about the Application is recorded. The Estates System will not allow entry of data about an undertaking at a later point in the file’s life cycle.

### 4.3.1 How are undertakings recorded?

- 1) Review the Application and affidavits. Determine whether the applicant checked the undertaking box in section 9 of Form 74A and 74.1A or section 8 of Form 74J (Estate Administration Tax):
- 2) Ensure that there are no changes made to the language of the undertaking statement in Form 74A, 74.1A, 74J (or contained in a supplemental affidavit).  
For example, the language should not be changed to indicate that the sworn statement of actual total estate value will be filed within six months of the date of the issuance of the Certificate or changed to indicate that it will be filed within another timeline (more than six months) of the date of the filing of the application. These changes are not permitted by section 4(3) of the *Estate Administration Tax Act, 1998*.
  - a) If the language has not been changed, proceed with processing and data entry.
  - b) If the language has been changed direct the application to a judge with a memo to explain the issue (that the undertaking statement does not comply with the requirements of s.4(3) of the *Estate Administration Tax Act, 1998*).
- 3) In the Estates System, select the **Asset Transaction Screen**. Record the initial transaction and the tax paid on the estimated estate value.
- 4) Select *Undertaking* from the dropdown menu and click *Add Asset Transaction*.

No.:	Transaction type:	Transaction completed:	Transaction date:	Comply by date:	Complied date:	Asset value:	Tax:	Amount owing:	Amount to be paid:	Amount paid:	Balance:
1	Initial Transaction	Yes	5-OCT-2021			155,000.00	1,575.00	1,575.00	1,575.00	1,575.00	0.00
2	Undertaking	No	5-OCT-2021	5-APR-2022		155,000.00	1,575.00	0.00	0.00	0.00	0.00

The *Complied Date* field should populate with a date 6 months from the *Received Date*. Do not revise this data unless directed to do so by a Judge's order.

### 4.3.2 How are tax payments that are made to satisfy undertakings processed?

An applicant who submits an undertaking must satisfy it within 6 months of the filing of the Form 74A, 74.1A or 74J application by filing the document set out below and paying the tax.

#### i. Documents that must be Filed

- 1) A sworn/affirmed statement of the actual total value of the estate; and
- 2) Payment of the additional estate administration tax owing, if any [s. 4(3) [Estate Administration Tax Act, 1998](#)] [[R.74.13\(2\)\(a\)\(b\)](#)].

## ii. Processing a tax payment that is made to satisfy an undertaking

- 1) Review the sworn statement of the actual total value of the estate. Ensure the tax payment amount does not exceed the tax amount owing. A tax payment that exceeds the amount owing should be returned to the applicant as set out in [Section 4.1.1](#).
- 2) In the Estates System, update the **Asset Transaction screen** with the *Complied Date*, *Asset Value* and *Amount Paid* information set out in the applicant's affidavit.
- 3) Verify that the system has calculated the correct Estate Administration Tax payable.

### 4.3.3 What if the undertaking is not complied with?

An applicant who files an undertaking and must satisfy it within 6 months of the filing of the Form 74A, 74.1A or 74.1J.

Where the applicant does not satisfy the undertaking:

- 1) Send an email or letter to contact the applicant to remind of the duty to comply with the outstanding undertaking.
- 2) If the applicant asks for more time to fulfill the undertaking: they must file an affidavit to explain the reason for the request. Direct the request and the affidavit to a judge.
- 3) If the applicant does not reply to the reminder email or letter in 10 business days, follow-up with a further reminder letter.
  - 4) b) If the applicant does not reply to this second email or letter, prepare an Affidavit Regarding Undertaking and swear/affirm it before a Commissioner.
  - 5) Prepare a draft Order for Compliance and forward the order and the Affidavit Regarding Undertaking to a Judge. The court A judge may make an order for compliance with the undertaking [s. 4(4) [Estates Administration Tax Act, 1998](#)].

## 4.4 Motion to Defer Tax Payment

A judge may make an order deferring the payment of the Estate Administration Tax and allowing a Certificate of Appointment to be issued in cases where:

- The certificate is urgently required;
- Financial hardship would result if the certificate were not issued; and
- Sufficient security is posted.

All these criteria must be met [s. 4(2), [Estate Administration Tax Act, 1998](#)].

Where the applicant is seeking a court order to defer the tax deposit payment, they should check the following box on the application (Part 9 of Form 74A, 74.1A or Part 8 of Form 74J Estate Administration Tax):

I am seeking an order to defer the payment of the estate administration tax deposit pursuant to section 4(1) of the *Estate Administration Tax Act, 1998*. I will file with the court, together with the application, a draft order (Form 74I) with a backsheet (Form 4C) and an affidavit with respect to the estate administration tax deposit (Form 4D).

If this box is checked, the applicant must file a draft order and an affidavit in support of the request. No fee is payable.

The draft order should be in Form 74I (seeking an Order to Defer Payment of the Estate Administration Tax), stating that the Estate Administration Tax must be paid on or before a specific date and addressing the bond [s. 4(3) [Estate Administration Tax Act, 1998](#)].

If the draft order and affidavit are filed, direct the Application to a Judge. See [Section 10, “Judicial Determination”](#) for more details.



#### 4.4.1 How is a Motion to Defer Tax (Section 4 Order request) processed?

Where a motion for an order to defer the tax deposit payment is made:

- 1) Record details of the Application and the Motion in the Estates System (no filing fee is payable)
- 2) Record the value of the estate in the 'Asset Transaction' tab.
- 3) In **Asset Transaction screen**, select 'Section 4' Order from the drop down menu and press 'add asset transaction'.

Section 4 Order ▾  
Add Asset Transaction

No.:	Transaction type:	Transaction completed:	Transaction date:	Comply by date:	Complied date:	Asset value:
1	Initial Transaction ▾	Yes ▾	10-NOV-2021			200,000.00

Navigation: <<<< << < > >> >>>>

- 4) Update **Notes screen** by recording the following:
  - a. Motion to defer tax;
  - b. Details of request.

Note: MOTION TO DEFER ESTATE TAX PAYMENT OF (S AMOUNT OWING) RECEIVED. FILE SENT FOR JUDICIAL REVIEW ON (DATE)

- 5) Direct the file to a Judge for determination.

The Judge's order will determine the deadline for the payment of the Estate Administration Tax deposit and address the amount of the bond that is payable [s. 4(3) [Estates Administration Tax Act, 1998](#)].

- 6) Upon return of file from Judge, update **Notes screen** by entering the details of the order such as:
  - a. Deadline to make the Estate Administration Tax payment
  - b. In the **Asset Transaction screen** update the *Comply By Date* to reflect the date set out in the Judge's order

- 7) On receipt of the tax payment in accordance with the order:

- Ensure the tax payment amount does not exceed the amount of tax owing. Such payments should be returned to clients as set out in [Section 4.1.1](#).
- In the **Asset Transaction screen** record the *Complied Date* and *Amount Paid*
- Update **Notes screen** with details of payment and compliance with the Section 4 Order

## 4.5 Tax Refund Requests

### 4.5.1 Is the applicant requesting a partial refund of Estate Administration Tax before a Certificate of Appointment has been issued?

Partial refunds of the Estate Administration Tax payment can be processed by court staff only where:

- a) A Certificate of Appointment has not been issued; and
- b) The request is made due to the applicant's error in the calculation of the estate value (for example, they should not have included an asset such as insurance proceeds that are payable to a named beneficiary or assigned for value, or property held jointly that passes by survivorship, or real estate outside Ontario).

#### i. Documents that must be Filed

The applicant must file:

- 1) An affidavit that describes the asset, the error made and the reason for the error.
- 2) Supporting documentation verifying the nature of the asset in question.

A refund, if processed, should be addressed through a Revenue Refund.

Speak with your manager if you are uncertain about whether a partial refund of the tax should be provided.

### 4.5.2 Is the applicant requesting a refund of Estate Administration Tax deposit after a Certificate of Appointment has been issued?

Once a Certificate of Appointment of Estate Trustee has been issued, the Estate Administration Tax deposit paid becomes the Estate Administration Tax.

At this point, requests for a tax refund must be made to the Ministry of Finance, and not at a courthouse.

Requests for a refund of the Estate Administration Tax must be sent to:

Ministry of Finance  
Compliance Branch  
33 King Street West  
Oshawa ON L1H 8H9

For more information visit the Ministry of Finance website at: <https://www.ontario.ca/page/estate-administration-tax#section-6>.

### 4.5.3 Is the applicant requesting a full refund of the Estate Administration Tax because the Application has been abandoned or withdrawn?

If a Certificate of Appointment has NOT been issued, the tax deposit paid at the court must be refunded [[Estates Administration Tax Act, 1998](#) s.3(6)].

Before a Certificate of Appointment is issued, an applicant can request the withdrawal of their Application for a Certificate of Appointment ([Form 74A, 74.1A or 74.1E](#)) and request a full refund of the Estate Administration Tax deposit paid upon filing.

A request for withdrawal of the application and/or notice that the application is being abandoned should include the following:

- i. Legal name of the payee to whom the refund cheque is to be made payable
- ii. HST number, if the payee is a firm or company.

To process such a request:

1. Review the applicant/lawyer's:
  - a. written request that the application be withdrawn ; or
  - b. notice of abandonment, together with proof of service (there is no prescribed form for a notice of abandonment), pursuant to Rule 38.08 of the *Rules of Civil Procedure*
2. File the written request or notice of abandonment and proof of service in the court file.
3. Process a revenue refund request for the Estate Administration Tax deposit payable to the payee of the tax deposit (if tax deposit was paid).
4. Record in the Estates System the date of withdrawal of the Application, the name of the person requesting withdrawal, and the date of any refund.
5. Retain the filed Application and supporting documents in the court file (proof of service, affidavit of service, draft certificate, other affidavits etc.) and do not return the Application and supporting documents unless a judge directs otherwise. You may only process a request for the return of the Affidavit and original Will as directed by a judge in limited circumstances as set out in [Section 19.1 - Maintain original Wills, Applications, Affidavits and supporting documents](#).

## 4.6 Payment of Additional Estate Administration Tax on Subsequently Discovered Property that Belonged to the Deceased

After a probate certificate has been issued, an estate trustee may submit a payment of additional Estate Administration Tax to the estates court office. Such payments are required to be made and an affidavit must be filed within six months of the estate trustee discovering additional property that belonged to the deceased (s.32(2) of the *Estates Act*) and s.2(7) *Estate Administration Tax Act, 1998*). The affidavit must disclose the value of this newly discovered property (s. 32(2) of the [Estates Act](#)).

### Ministry of Finance - Estate Information Return

Estate trustees must submit to the Ministry of Finance an Estate Information Return (EIR) within 180 days after the Certificate of Appointment has been issued. The EIR form requires the estate trustee to provide detailed information about the assets in the estate.

If estate property is subsequently discovered, an amended EIR is required within 30 days after additional tax is paid at the court. Clients seeking information about the EIR can be directed to the Ministry of Finance website at: [www.ontario.ca/estateadmintax](http://www.ontario.ca/estateadmintax).

Court staff will not accept the Estate Information Return form for filing at the court and must not place a copy in the court file. This form contains detailed financial information (bank account numbers and balances, etc.).

#### i. Documents that must be Filed

- 1) An Affidavit outlining the additional estate assets discovered
- 2) Payment for the additional Estate Administration Tax owed for the additional assets.

#### ii. Processing Additional Estate Administration Tax Payments

To process a payment of additional Estate Administration Tax for subsequently discovered property that belonged to the deceased, take the following steps:

- 1) Review the affidavit which outlines the new total value of the estate. If an affidavit has not been filed, consider providing the estate trustee with a blank affidavit for completion.

In a Small Estate Application, estate court staff must review the affidavit to ensure it outlines that:

- a. the asset with an updated value is an asset that is listed in the certificate which was issued; and
- b. the new total value of the estate is equal to or less than \$150,000 (the maximum small estates value).

If a Small Estate Certificate has been issued and the estate trustee later discovers additional (**new**) estate assets that are not listed in the certificate the estate trustee would need to return to the court to get authority to manage those assets. In this case,

- if the combined value of the new assets discovered, plus the value of the assets that are listed in the Small Estate Certificate, equal \$150,000 or less: the estate trustee can bring an application to the court for an Amended Small Estate Certificate ([Form 74.1E](#)) ([Rules of Civil Procedure](#), r. 74.1.05)
- if the new assets result in a total estate value that is more than \$150,000, the estate trustee can bring an application to the court for a Certificate of Appointment of Estate Trustee (r. 74.1.06).

2) Bring the file up in the Estates System and select the ‘Asset Transaction’ tab. Select ‘Asset Revision’ from the drop-down menu and select ‘Add Asset Transaction’.

No.:	Transaction type:	Transaction completed:	Transaction date:	Comply by date:	Complied date:	Asset value:	Tax:	Amount owing:	Amount to be paid:	Amount paid:
1	Initial Transaction	Yes	6-JAN-2021			366,000.00	4,740.00	4,740.00	4,740.00	4,740.00

3) Enter the new total value of the estate under the ‘Asset Value’ area. Verify that the payment for additional tax reflects the value under ‘Amount owing’ and ‘Amount to be paid’.

No.:	Transaction type:	Transaction completed:	Transaction date:	Comply by date:	Complied date:	Asset value:	Tax:	Amount owing:	Amount to be paid:	Amount paid:
1	Initial Transaction	Yes	6-JAN-2021			366,000.00	4,740.00	4,740.00	4,740.00	4,740.00
2	Asset Revision	Yes	29-OCT-2021			375,000.00	4,875.00	135.00	135.00	0.00

4) Record the transaction date. Enter the amount of additional Estate tax paid under the ‘Amount Paid’ section. Click on the ‘Notes’ tab and enter a note that an Affidavit and additional tax payment was received and the date it was processed. Notes screen – “Affidavit filed outlining the additional estate assets discovered and payment processed for the additional Estate Administration Tax owed for the additional assets. Ministry of Finance receipt dated (date) provided to estate trustee that an additional tax payment of (amount) was made”.

No.:	Transaction type:	Transaction completed:	Transaction date:	Comply by date:	Complied date:	Asset value:	Tax:	Amount owing:	Amount to be paid:	Amount paid:
1	Initial Transaction	Yes	6-JAN-2021			366,000.00	4,740.00	4,740.00	4,740.00	4,740.00
2	Asset Revision	Yes	29-OCT-2021			375,000.00	4,875.00	135.00	135.00	135.00

5) Once you have processed the additional tax payment, staple the cash register receipt to the inside cover of the physical file and provide a copy of the receipt to the estate trustee or their representative.

### iii. Additional Estate Administration Tax paid directly to Ministry of Finance

The estate trustee can choose to send the cheque for additional tax owing directly to the Ministry of Finance (MOF) together with the Estate Information Return. The MOF will deposit the cheque and, after the cheque has cleared, mail to the estate trustee a “Confirmation of Receipt of Payment” together with a blank affidavit form. The MOF will inform the estate trustee on this receipt that they must take the receipt and a completed affidavit regarding the true value of the estate to the court that issued the Certificate of Appointment.

If the estate trustee has filed a MOF “Confirmation of Receipt of Payment” together with the affidavit, swearing to the new total value of the estate, take the following steps:

1) Record the new total of the estate and additional tax paid into the Estate System under the *Asset Transaction tab*.

2) Verify that the receipt for additional tax reflects in the correct amount owing as follows:

New total value of the estate – amount stated in the affidavit (if they do not have an affidavit, print one from the CSD intranet ‘estates forms’ for them to complete):

3) Asset revision - amount indicated in the receipt

Asset Revision ▾  
Add Asset Transaction

No.:	Transaction type:*	Transaction completed:*	Transaction date:*	Comply by date:	Complied date:	Asset value:*	Tax:*
1	Initial Transaction ▾	Yes ▾	19-APR-2021			200,000.00	2,250.00
2	Asset Revision ▾	Yes ▾	10-NOV-2021			0.00	0.00

4) Date – date of your data entry

Asset Revision ▾  
Add Asset Transaction

No.:	Transaction type:*	Transaction completed:*	Transaction date:*
1	Initial Transaction ▾	Yes ▾	19-APR-2021
2	Asset Revision ▾	Yes ▾	10-NOV-2021

5) Notes screen – “Affidavit filed outlining the additional estate assets discovered and payment processed for the additional Estate Administration Tax owed for the additional assets. Ministry of Finance receipt dated (date) provided that an additional tax payment of (amount) was made directly to the Ministry of Finance”.

- 6) If payment was not enough based on the new total value of the estate, advise the client how much is owing for payment. Record this communication in the Notes screen.
- 7) Place a copy of the receipt in the court file.

If you have any questions regarding a confirmation of receipt of a tax payment, you can contact the MOF at [EstateAdminTaxProgram@Ontario.ca](mailto:EstateAdminTaxProgram@Ontario.ca) or call a Program Analyst at (905) 440-4083 or (905) 440-4085.

## Section 5. Probate Application Document Check

There are many documents that must be filed in support of an Application for a Certificate under Rule 74 or 74.1 (an Application for a Certificate of Appointment of Estate Trustee using Form 74A, for a Small Estate Certificate using Form 74.1A or for an Amended Small Estate Certificate using Form 74.1E).

Ensure that the required documents were filed as set out in Sections [5.1](#) to [5.5](#). A summary of the requirements is set out in [Table 7](#).



**Table 7. Documents that must be Filed in a Form 74A or 74.1A Application**

Document that must be filed	Rule 74 Applications with or without a Will	Rule 74.1 Applications with or without a Will	Other considerations
<b>Application</b>	Form 74A	Form 74.1A	
<b>Affidavit or declaration regarding service</b>	Form 74B, 74B.1	Form 74.1B	
<b>Proof of Death</b>	Yes, in the form of an original or certified/notarial copy of a: <ul style="list-style-type: none"> <li>• death certificate issued by the Registrar General,</li> <li>• a certificate in respect of death issued by a funeral director, or</li> <li>• an order made under the <a href="#">Declarations of Death Act, 2002</a>.</li> </ul>	Yes, in the form of an original or certified/notarial copy of a: <ul style="list-style-type: none"> <li>• death certificate issued by the Registrar General,</li> <li>• a certificate in respect of death issued by a funeral director, or</li> <li>• an order made under the <a href="#">Declarations of Death Act, 2002</a>.</li> </ul>	
<b>Draft Certificate of Appointment</b>	Form 74C and Backsheet Form 74C	Form 74.1C and Backsheet Form 74C	
<b>Applications with a will</b>	Original Will  and  one Affidavit ( <a href="#">Form 74D</a> , <a href="#">74E</a> or <a href="#">74F</a> or an affidavit explaining why one of these documents can't be filed). If Form 74E (Affidavit of Condition of Will or Codicil) is filed, a copy of the Will without the alterations must also be filed.	Original Will  and  one Affidavit ( <a href="#">Form 74D</a> , <a href="#">74E</a> or <a href="#">74F</a> or an affidavit explaining why one of these documents can't be filed).	If the Will is filed in a language other than English or French, a translation into English certified by affidavit of the translator must be filed (s.125 (2)(b) <a href="#">Courts of Justice Act</a> ).  If the Will includes a reference to a memorandum (or “list” or “precatory memorandum”) that expresses the wishes of the testator that “may have been prepared by me [the testator]” or “that I [the testator] will prepare”, this document does not have to be filed with the Application.  If the Will mentions a memorandum that was signed and dated by the testator prior to the execution of the Will and deals with disposition of the testator’s property; it may also clearly state that it is incorporated in the Will or is attached to the Will. This document is part of the Will and is required to be filed with the Will for purposes of the estate

Document that must be filed	Rule 74 Applications with or without a Will	Rule 74.1 Applications with or without a Will	Other considerations
			Application. Referred to as a “legal memorandum” or “memorandum by incorporation”. If an original Will is not filed, but only a copy of the Will is filed, a Form 14E Notice of Application should be filed (with a few exceptions). See <a href="#">Section 14.3</a> , Application to prove a Testamentary Instrument.
<b>Renunciation</b> of persons entitled to apply to act as estate trustee	Form 74G dated Sept. 1, 2021 or Part A of Form 74G dated Nov. 1, 2023 from the following persons:	Not required	A separation agreement of the deceased and spouse which contains a renunciation of the spouse’s right to apply to act as estate trustee can be filed instead of a Form 74G from the separated spouse. If this is filed, direct Application to a Judge for determination of the validity of the renunciation in the separation agreement.
i.Applications with a will	<ul style="list-style-type: none"> <li>every person who is named in the Will or Codicil as estate trustee who has not joined in the Application.</li> </ul>		
ii.Applications without a will	<ul style="list-style-type: none"> <li>every person who is entitled in priority or is in equal right to be named as estate trustee and who has not joined in the Application.</li> </ul>		
<b>Consent</b> i. Application with a Will but the applicant is not named as an estate trustee in the Will or a Codicil; and ii. Application without a Will	Form 74H dated Sept .1, 2021 or Part B of Form 74G dated Nov. 1, 2023 from: <ul style="list-style-type: none"> <li>each person who is entitled to share in the distribution of the estate (estate beneficiaries) and who together have a majority interest in the value of the assets of the estate at the date of death</li> <li>required if a request on consent to dispense with the bond or reduce the bond amount is made.</li> </ul>	Not required for Application (but required if there is request on consent to dispense with a bond or reduce the bond amount)	Not required if the Public Guardian and Trustee is applying pursuant to section 1 of the <a href="#">Crown Administration of Estates Act</a> and there are no known next of kin.

Document that must be filed	Rule 74 Applications with or without a Will	Rule 74.1 Applications with or without a Will	Other considerations
Application with a Will limited to the assets referred to in the Will	Form 74I, draft order	Not applicable	
Estate Administration Tax deposit, if required	See <a href="#">Section 4</a>	See <a href="#">Section 4</a>	
<b>Bond</b>			
i. Applications with a Will	<p>If a bond is required:            -a bond (Form 74L or 74M);            -an order dispensing with the bond; OR            -a request on consent or a motion to dispense with or reduce the bond.</p> <p>For requests on consent, the following must be filed:            - an affidavit (Form 4D) of the applicant_(not lawyer)            -a draft order (Form 74I) and            -a Consent to the order (Form 74H dated Sept. 1, 2021 or Part B of Form 74G dated Nov. 1, 2023) from each person entitled to share in the distribution of the estate</p> <p>See <a href="#">Section 6.2</a> “Bonds”.</p>	<p>If a bond is required:            -a bond (Form 74L or 74M);            -an order dispensing with the bond; OR            -a request on consent or a motion to dispense with or reduce the bond.</p> <p>For requests on consent, the following must be filed:            - an affidavit (Form 4D) of the applicant (not lawyer)            -a draft order (Form 74I) and            -a Consent to the order (Form 74H dated Sept. 1, 2021, or Form 74G Part B dated Nov. 1, 2023) from each person entitled to share in the distribution of the estate</p> <p>See <a href="#">Section 6.2</a> “Bonds”.</p>	<p>For requests on consent to waive or reduce the bond:</p> <ol style="list-style-type: none"> <li>1. The request must be made on consent of the persons who are entitled to share in the distribution of the estate.</li> <li>2. None of the persons entitled to share in the distribution of the estate can be               <ol style="list-style-type: none"> <li>a. a minor, or</li> <li>b. a person who is mentally incapable within the meaning of section 6 of the Substitute Decisions Act, 1992 in respect of an issue in the proceeding, unless there is a guardian or attorney acting under a power of attorney with authority to act in the proceeding.</li> </ol> </li> </ol>
ii. Applications without a Will	<p>-A bond (Form 74L or 74M);            -an order dispensing with the bond; OR            -a request on consent or a motion to dispense with or reduce the bond.</p>	<p>-A bond (Form 74L or 74M);            -an order dispensing with the bond; OR            -a request on consent or a motion to dispense with or reduce the bond.</p>	

Document that must be filed	Rule 74 Applications with or without a Will	Rule 74.1 Applications with or without a Will	Other considerations
	<p>For requests on consent, the following must be filed:</p> <ul style="list-style-type: none"> <li>- an affidavit (Form 4D) of the applicant (not lawyer)</li> <li>-a draft order (Form 74I) and</li> <li>-a Consent to the order (Form 74H dated Sept. 1, 2021 or Part B of Form 74G dated Nov. 1, 2023) from each person entitled to share in the distribution of the estate</li> </ul> <p>See <a href="#">Section 6.2</a> "Bonds".</p>	<p>For requests on consent, the following must be filed:</p> <ul style="list-style-type: none"> <li>- an affidavit (Form 4D) of the applicant (not lawyer)</li> <li>-a draft order (Form 74I) and</li> <li>-a Consent to the order (Form 74H dated Sept. 1, 2021 or Form 74G Part B dated Nov. 1, 2023) from each person entitled to share in the distribution of the estate</li> </ul> <p>See <a href="#">Section 6.2</a> "Bonds".</p>	

## 5.1 Form 74A Applications

A person who is applying for a Certificate of Appointment using Form 74A must select the type of certificate that they are seeking. They will select one of the following certificate types:

- Certificate of Appointment of Estate Trustee with a Will
- Certificate of Appointment of Estate Trustee with a Will Limited to the Assets Referred to in the Will
- Certificate of Appointment of Estate Trustee without a Will

### 5.1.1 Is the Application for a Certificate of Appointment of Estate Trustee with or without a Will?

#### i. Documents that must be Filed

The documents that must be filed in a Form 74A Application for a Certificate of Appointment under rule 74.04(1) are as follows:

- 1) Form 74A - Application
- 2) Form 74B - Affidavit of Service of Application or Form 74B.1 - Lawyer's Certificate of Service of Application (not required if applicant is the sole beneficiary of the estate)
- 3) Proof of death, in the form of an original or certified/notarial copy of a:
  - Death Certificate issued by the Registrar General,
  - a Certificate in respect of death issued by a funeral director, or
  - an Order made under the [Declarations of Death Act, 2002](#)

A funeral director's death certificate with the deceased's social insurance number (S.I.N.) redacted should be accepted for filing.

- 4) Form 74C - draft Certificate of Appointment of Estate Trustee and Backsheet (Form 4C) along with copy of the Will attached to it (if there is a Will).
- 5) If there is a Will, one of the following affidavits:
  - (i) If the Will or Codicil is not in holograph form,
    - (A) Form 74D - Affidavit of Execution of the Will or Codicil, or
    - (B) Form 74E- Affidavit as to the Condition of the Will or Codicil at the time of Execution (if the will or codicil contains an alteration, erasure, obliteration or interlineation that has not been attested), or
    - (C) Affidavit explaining the reason that a Form 74D or 74E cannot be filed (for example, to explain that each of the witnesses to the Will or Codicil has died or cannot be found) or such other evidence of due execution as the court may require, or
  - (ii) if the Will or Codicil is in holograph form, an Affidavit Regarding the Holograph Will or Codicil (Form 74F) attesting:

- that the handwriting and signature in the Will or Codicil are those of the deceased;
- whether the deponent of the affidavit has a potential interest that may conflict with the interests of estate beneficiaries; and
- any other information that may be relevant to the issue of the validity of a holograph Will or Codicil
  - The September 2021 version of Form 74F can be filed until April 1, 2024 (O.Reg. 388/23).
  - The November 2023 version of Form 74F can be filed starting on December 14, 2023.

6) The original of the Will and of any Codicils, must be attached and marked as an exhibit to one of the above-noted affidavits (Rule 74.04(1)(d)).

- The original Will should be marked as an exhibit to an Affidavit of Execution (Form 74D), Affidavit of Condition (Form 74E) or Affidavit Regarding a Holograph Will or Codicil (Form 74F), in accordance with rule 74.04(1)(d) and in accordance with the direction contained in Forms 74D, 74E and 74F.
- There is no legislative provision or court rule directing the placement of an exhibit stamp for a Will. An exhibit stamp can be placed on the back of the Will (ideally on the back of the signing page but it can be placed on the back of another page) or it can be placed on a separate sheet of paper that is attached before the Will (a sheet that is placed before the Will which is attached to the Affidavit Form 74D, 74E or 74F).
- An application should not be rejected on the sole basis that the exhibit stamp is not on the back of the Will. If the Will is not marked as an exhibit to the Affidavit or it is marked as an exhibit but you have concerns that the Will is not a proper exhibit, direct the Application to a judge. See Section 10, “Judicial Determination”.

7) Form 74G dated September 1, 2021 or Part A of Form 74G dated November 1, 2023 - Renunciation of a person’s entitlement to be appointed from the following persons:

- (i) if there is a Will, from every living person who is named in the Will or Codicil as estate trustee who has not joined in the Application and is entitled to do so, (Rule 74.04(1)(e)(i));  
or
- (ii) if there is no Will, from every person who is entitled in priority or is in equal right to be named as estate trustee and who has not joined in the Application (Rule 74.04(1)(e)(ii)).

8) Form 74H dated September 1, 2021 or Part B of Form 74G dated November 1, 2023 - Consent to the applicant’s appointment as estate trustee from the following persons:

- (i) if there is no Will, or if there is a Will but the applicant is not named as an estate trustee in the Will or a Codicil, from persons who are entitled to share in the distribution of the estate and who together have a majority interest in the value of the assets of the estate at the date of death.

- 9) Form 74I - Draft Order, in the case of an Application for a Certificate of Appointment of Estate Trustee with a Will Limited to the Assets Referred to in the Will.
- 10) Any security required by the *Estates Act*;
- 11) Any court order directing the issuance of the certificate (Rule 74.04(1)(c.1)); and;
- 12) Such additional or other material as the court directs.

### 5.1.2 Is the Application for a Certificate of Appointment of Estate Trustee with a Will Limited to the Assets Referred to in the Will or does the application refer to a secondary Will?

A testator may execute two or more Wills concurrently, commonly called primary and secondary Wills. One Will deals with assets for which a Certificate of Appointment of Estate Trustee with a Will Limited to Assets Referred to in the Will is required, the other Will(s) deal with assets which may be administered without a Certificate of Appointment of Estate Trustee.

A person who is seeking a Certificate of Appointment of Estate Trustee with a Will Limited to Assets Referred to in the Will can apply to the court using Form 74A. They would select this certificate type from the options list on the form.

#### i. Documents that must be Filed

The documents that must be filed in a Form 74A Application for a Certificate of Appointment of Estate Trustee with a Will Limited to Assets Referred to in the Will under rule 74.04(1) are as follows:

- a. All of the documents that are required to be filed for a Certificate of Appointment of Estate Trustee with a Will or without a Will (see [Section 5.1.1](#), “Documents that must be Filed” for a Certificate of Appointment of Estate Trustee with or without a Will).
- b. A draft Order [[Form 74I](#)] granting a Certificate of Appointment of Estate Trustee with a Will Limited to the Assets Referred to in the Will, with backsheet [[Form 4C](#)].
- c. The original Will that is filed must be the one that is referred to in the Application.

See [Section 6.1.7](#) for details on how to process the application for a Certificate Limited to Assets Referred to in the Will or an application referring to a secondary Will.

## 5.2 Form 74.1A Applications

### 5.2.1 Is the Application for a Small Estate Certificate?

An Application for a Small Estate Certificate ([Form 74.1A](#)) can be made where the total value of the estate assets is up to \$150,000 [[Rule 74.1](#)].

The small estates procedure is available as an **option**. As a result, an applicant can choose to start an Application for a Certificate of Appointment using Form 74A for an estate that is valued at \$150,000 or less.

An issued Small Estate Certificate ([Form 74.1C](#)) has the same legal effect as an issued Certificate of Appointment of Estate Trustee (Form 74C), except that the authority of the estate trustee is limited to the estate assets specifically listed in the Application and the Certificate.

Where an Application for a Small Estate Certificate is made:

- the rules under Rule 74.1 apply instead of Rules 74.01 to 74.11 and 74.14 [[R.74.1.02\(1\)](#)]; and
- Rule 74 (other than rules 74.04 to 74.11 and 74.14) continues to apply and references to a Certificate of Appointment of Estate Trustee shall be read as a reference to a Small Estate Certificate [[R. 74.1.02\(2\)](#)].

If the asset value identified in a Form 74.1C or 74.1E Application is more than \$150,000, send a Registrar's Notice ([Form 74.1D](#)) to the applicant or their lawyer (see [Section 9](#) Registrar's Notice to Applicant). Advise that a certificate cannot be issued since the estate value exceeds the small estate value and that a Form 74A Application (for a Certificate of Appointment of Estate Trustee) can be commenced.

#### i. Documents that must be Filed

The documents that must be filed in an Application for a Small Estate Certificate under [Rule 74.1.03\(1\)](#) are as follows:

- 1) Form 74.1A - Application for a Small Estate Certificate
- 2) Form 74.1B - Request to file an Application for a Small Estate Certificate or an Amended Small Estate Certificate (not required if applicant is the sole beneficiary of the estate)
- 3) Proof of death, in the form of an original or certified/notarial copy of a:
  - Death Certificate issued by the Registrar General,
  - a Certificate in respect of death issued by a funeral director, or
  - an Order made under the [Declarations of Death Act, 2002](#)A funeral director's death certificate with the deceased's social insurance number (S.I.N.) redacted should be accepted for filing.
- 4) Form 74.1C - Draft Small Estate Certificate, along with copy of the Will attached to it (if there is a Will).
- 5) If there is a Will, one of the following affidavits:
  - (i) if the Will or Codicil is not in holograph form,
    - (A) Form 74D - Affidavit of Execution of the Will or Codicil, or
    - (B) Form 74E - Affidavit as to the Condition of the Will or Codicil at the time of execution (if the will or codicil contains an alteration, erasure, obliteration or interlineation that has not been attested), or



- (C) Affidavit explaining the reason that a Form 74D or 74E cannot be filed (for example, to explain that each of the witnesses to the will or codicil has died or cannot be found) or such other evidence of due execution as the court may require, or
- (ii) if the Will or Codicil is in holograph form, an Affidavit Regarding the Holograph Will or Codicil (Form 74F) attesting:
- that the handwriting and signature in the Will or Codicil are those of the deceased;
  - whether the deponent of the affidavit has a potential interest that may conflict with the interests of estate beneficiaries; and
  - any other information that may be relevant to the issue of the validity of a holograph Will or Codicil.
    - The September 2021 version of Form 74F can be filed until April 1, 2024 (O.Reg. 388/23)
    - The November 2023 version of Form 74F can be filed starting on December 14, 2023.
- 6) The original of the Will and of any Codicils, must be attached and marked as an exhibit to one of the above-noted affidavits (Rule 74.1.03(1)(d)).
- The original Will should be marked as an exhibit to an Affidavit of Execution (Form 74D), Affidavit of Condition (Form 74E) or Affidavit Regarding a Holograph Will or Codicil (Form 74F), in accordance with rule 74.1.03(1)(d) and in accordance with the direction contained in Forms 74D, 74E and 74F.
  - There is no legislative provision or court rule directing the placement of an exhibit stamp for a Will. The exhibit stamp can be placed on the back of the Will (ideally on the back of the signing page but it can be placed on the back of another page) or it can be placed on a separate sheet of paper that is attached before the Will (a sheet that is placed before the Will which is attached to the Affidavit Form 74D, 74E or 74F).
  - An application should not be rejected on the sole basis that the exhibit stamp is not on the back of the Will. If the Will is not marked as an exhibit to the Affidavit or it is marked as an exhibit but you have concerns that the Will is not a proper exhibit, direct the application to a judge.
- 7) Any security required by the *Estates Act*;
- 8) Any court order directing the issuance of the certificate (Rule 74.1.03(1) (c.1)); and;
- 9) Such additional or other material as the court directs.

## 5.3 Form 74J Applications

A person who is applying for a Certificate or Confirmation of Appointment using Form 74J must select the type of certificate that they are seeking. They will select one of the following certificate types:

- Certificate of Appointment of Succeeding Estate Trustee with a Will
- Certificate of Appointment of Succeeding Estate Trustee with a Will Limited to the Assets Referred to in the Will
- Certificate of Appointment of Succeeding Estate Trustee without a Will
- Certificate of Appointment of Foreign Estate Trustee's Nominee as Estate Trustee without a Will
- Certificate of Appointment of Estate Trustee During Litigation
- Confirmation by Resealing of Appointment of Estate Trustee
- Certificate of Ancillary Appointment of Estate Trustee with a Will

### 5.3.1 Is the Application for a Certificate of Appointment of Succeeding Estate Trustee with a Will?

See Section [11.3.2](#), [11.4](#), [11.5](#) and [11.6](#)

### 5.3.2 Is the Application for a Certificate of Appointment of Succeeding Estate Trustee with a Will Limited to the Assets Referred to in the Will?

See Section [11.3.2](#), [11.4](#), [11.5](#) and [11.6](#)

### 5.3.3 Is the Application for a Certificate of Appointment of Succeeding Estate Trustee without a Will?

See Section [11.3.2](#), [11.4](#), [11.5](#) and [11.6](#)

### 5.3.4 Is the Application for a Certificate of Appointment of Foreign Estate Trustee's Nominee as Estate Trustee without a Will?

See Section [12.2.1](#).

### 5.3.5 Is the Application for a Certificate of Appointment of Estate Trustee During Litigation?

See Section [14.10](#)

### 5.3.6 Is the Application for a Confirmation by Resealing of Appointment of Estate Trustee?

See Section [12.2.2](#).

### 5.3.7 Is the Application for a Certificate of Ancillary Appointment of Estate Trustee with a Will?

See Section [12.2.3](#).

## 5.4 Form 74.1E Applications

A person who is appointed as the estate trustee of an estate through a Small Estate Certificate (named in the Certificate as the estate trustee) may seek to obtain an Amended Small Estate Certificate by filing an Application Form 74.1E ([rule 74.1.05\(1\)](#)). This Application is filed if, after a Small Estate Certificate is issued, additional assets of the estate are discovered and the estate trustee needs legal authority to administer those assets and the estate continues to be a small estate.

### 5.4.1 Is the Application for an Amended Small Estate Certificate?

After a person is issued a Small Estate Certificate, they may discover additional estate assets that they are not legally authorized to manage. They may need to return to the court to seek authority to manage those assets.

In this case, they can bring an Application to Amend Small Estate Certificate if the combined value of the new assets that are discovered plus the value of the assets that are listed in their Small Estate Certificate total \$150,000 or less.

The Application to Amend Small Estate Certificate [[Form 74.1E](#)] requires the applicant to identify the additional assets and their value. If the court issues an Amended Small Estate Certificate [[Form 74.1F](#)], it will list both the assets listed in the original Small Estate Certificate and the additional estate assets.

If the newly discovered assets result in a total estate value that is more than \$150,000, the applicant should start an Application for a Certificate of Appointment of Estate Trustee (using [Form 74A](#)). Send a Registrar's Notice to the applicant or their lawyer if the total combined asset value exceeds \$150,000 (see [Section 9](#) "Registrar's Notice to Applicant").

An estate trustee named in the Small Estate Certificate may make an Application to Amend Small Estate Certificate or Application for a Certificate of Appointment of Estate Trustee ([rules 74.1.05 \(1\)](#) and [74.1.06 \(1\)](#)). A person who is not named as the estate trustee in the Certificate may not make an application to amend the Certificate.

Where an Application to Amend a Small Estate Certificate or Application for a Certificate of Appointment of Estate Trustee is filed, the originating file for which the Small Estate Certificate was issued should be readily available (on-site) for staff to access the Application, original Will/Codicil and other supporting documents.

#### i. Documents that must be Filed

The documents that must be filed in an Application for an Amended Small Estate Certificate under [rule 74.1.05\(1\)](#) are as follows:

- 1) [Form 74.1E](#), Application to Amend Small Estate Certificate
- 2) [Form 74.1B](#), a Request to File an Application for a Small Estate Certificate or an Amended Small Estate Certificate ([Form 74.1B](#))

- 3) [Form 74.1C](#), a copy of the issued Small Estate Certificate
- 4) [Form 74.1F](#), a draft Amended Small estate Certificate listing both the assets listed in the small estate certificate and the additional assets
- 5) Any security required by the [Estates Act](#); and
- 6) Such additional or other material as the court directs.

A video tutorial on how to enter an Application to Amend Small Estate Certificate and use the cloning feature in the Estates System is available [here](#).

## ii. Document and file review

Review the originating file to determine if:

- a. a bond was required and whether the bond was filed, dispensed with or reduced by court order.

If a bond was required and addressed in the originating file, direct the Application to Amend Small Estate Certificate to a Judge.

- A Judge can decide whether to make an order that the bond or order dispensing or reducing the bond amount may be applied to the Application to Amend Small Estate Certificate.

- b. an order to defer the estate administration tax was made and if it has been complied with.

If additional tax is payable, a prior order made to defer taxes would not apply to the Application to Amend Small Estate Certificate. If an order to defer taxes was made or is sought, direct the application to amend the certificate to a judge to determine whether an order should be made to defer the additional taxes payable.

## 5.5 Applications filed by email

### 5.5.1 What documents can be submitted for filing by email?

Where a party is submitting probate documents for filing by email, the package must contain the following:

- i. Completed [Information Form](#)

The Information Form should be completed to indicate:

- which forms/documents are being included based on the type of application being filed; and
- includes a check box for filers to indicate the applicant's preferred format and delivery of the issued probate certificate (electronically by email or in paper format for pick up in person).

- ii. The court forms/documents which are eligible for filing by email.

The following Applications and documents are eligible for filing by email:

- a. **Form 74A, Form 74.1A and Form 74.1E**, Applications for Certificate of Appointment of Estate Trustee, Small Estate Certificate or Amended Small Estate Certificate
- b. **Form 74J**, Applications for Appointment or Confirmation of Estate Trustee (for Certificate of Appointment of Succeeding Estate Trustee, Confirmation by Resealing of Appointment of Estate Trustee or Certificate of Ancillary Appointment of Estate Trustee)
- c. **Supporting material** for the Application that is filed by email (Forms 74B/74B.1, 74.1B, 74.1C, 74C, 74D, 74E, 74F, 74G (dated November 1, 2023 or dated September 1, 2021) 74H (dated September 1, 2021), 74I, proof of death, motion, draft order etc.)
- d. **Form 75.1** Notice of Objection
- e. **Form 74P** Requests for Notice of Commencement of Proceeding

### 5.5.2 What if an Information Form is incomplete or if any required documents are missing in the email submission?

You should not refuse to accept an application for filing unless you are authorized to do so by [Directive 2022/08 - Electronic document filings](#) or a specific provision of this manual. If the [Information Form](#) is not complete, you should ask the filer to provide any applicable missing information (such as filer information) by email.

If you determine that the application is incomplete or any of the required documents are missing, send a Registrar's Notice ([Form 74O](#) or [Form 74.1D](#)) which includes the court file number. See [Section 9](#) - Registrar's Notice to Applicant and [Section 3.4](#), Assigning a court file number, for more details.

### 5.5.3 What documents must be submitted in paper form for an Application filed by email?

Where an Application is filed by email, the applicant must file or submit the following documents in paper form (sent by mail, registered mail, courier or delivered in person at the court office):

- a. original documents (e.g. Wills, Codicils, Bonds, Ancillary Certificates)
- b. certified copy of a document that is required
- c. Estate Administration Tax payment and any filing fees

In the Information Form that is sent by email along with the documents, the filer must indicate the method of delivery of the original Will/Codicil and payment of the Estates Administration Tax and any filings fees.

Where a paper document (for example, original Will/Codicil, certified copies, or bonds) is filed with the court, take the following steps:

1. Place the original documents (Will/Codicil etc.) into a physical court file folder marked with the same file number as assigned to the emailed application.
2. Subject to local practices, mark the file folder with an “E” or “Electronic File” to indicate other court documents for that file are maintained electronically.
3. If a court file number has not yet been assigned, assign a court file number. See [Section 3.4 - Assigning a Court File Number](#) for more details.
4. If the filer has not yet been notified of the court file number, notify the filer of the court file number by email (must be completed within 5 business days of receipt of the application by email).
5. Proceed with the processing of the application.

You may not complete the processing of an application until the original will/codicil and tax payment is received and recorded in the Estates System.

### 5.5.4 What are the email filing requirements and naming protocols for probate applications and supporting documents?

The email filing requirements are set out in the [Superior Court of Justice Consolidated Practice Direction Part IV, paragraph 88](#).

Where email is used to file documents in probate Applications, the following requirements must be met:

- a. The subject line of the email sent to the court must indicate the acronym for the court, the area of law, court file number (if any), and type of document, as set out in the examples below:

SCJ – ESTATES – ES-1234567 – Application for Certificate of Appointment of Estate Trustee

SCJ – ESTATES – new file – Application for Certificate of Appointment of Estate Trustee

- b. Each email sent to the court, including attachments, must not exceed 35 MB.

- c. Each document attachments must be in PDF format.
- d. Each PDF attachment must contain only one court form and must be saved with name that specifies the court form number and type of document (e.g. Form 74.10 Affidavit of Condition of Will)
  - a. Form number and document type
  - b. Name of the deceased, and
  - c. Date on which the document was created or signed, in the format DD-MMM-YYYY (e.g. 12-JAN-2021).

For example, documents should be saved as follows:

Form 74E Affidavit of Condition of Will – John Smith, deceased – 13-MAR-2023

Form 74G Renunciation – John Smith, deceased – 16-FEB-2023

You should not refuse to accept a filing if it does not contain the standard subject line or document naming convention. You may, however, wish to notify the filer that while the documents were accepted for filing, for future filings they should comply with the format requirements of [Superior Court of Justice Consolidated Practice Direction Part IV, paragraph 88](#). Information about filing court documents by email is also available on the [CSD court forms website](#).

### 5.5.5 How will a filer know their email submission was received by the court and receive the assigned court file number?

Immediately upon sending a submission by email to the court, the filer should receive an automatic email reply from the estates court email address acknowledging their email requesting the filing of documents. If your estates court generic email inbox does not have an automatic reply set up, please discuss this with your supervisor and refer to the CSD guide on [How to Setup an Automatic Reply in Outlook](#) to set up the auto reply.

**Within 5 business days of receipt of the application by email**, you should send the following email response to the filer to notify them of the assigned court file number and receipt of tax payment:

The Superior Court of Justice at (court location) confirms the receipt of an Application for (*insert application type - Certificate of Appointment of Estate Trustee or Small Estate Certificate or other application type*) and a (*insert payment type – tax payment or document filing fee payment*) payment in connection with the application for the estate of:

Deceased Name:

Court File Number:

(if applicable, insert Estate Administration Tax received in the amount of: \$)

(if applicable, insert Will dated XX (or Codicil dated XX)

(if applicable, insert Document Filing Fee received in the amount of \$)

If documentation is missing from your application or further information is required, you will be notified by court staff by email.

If a (*insert application type - Certificate of Appointment of Estate Trustee or Small Estate Certificate*) is issued to you or your client, you will receive an email containing the issued Certificate. Only one electronically issued Certificate will be provided [*if the applicant has requested to pick-up a paper certificate in person, replace with “you will receive an email advising once the paper certificate is available for pick-up”*].

See Section 3.4 – Assigning a Court File Number for more details.

### 5.5.6 In what format is a probate certificate issued if the application is submitted by email?

A Certificate of Appointment ([Form 74C](#), [74.1C](#) or [74.1E](#)) will be electronically issued and delivered by email to the address provided by the applicant, unless a request has been made for a paper certificate to be picked up in person.

If the applicant/lawyer made a request for a paper certificate in the [Information Form](#) (they checked off the box in Section 5 to ask for a paper certificate) proceed with issuing the certificate in paper format.

If this was not requested, or if the applicant/lawyer did not indicate any preferred format and delivery of the certificate on the Information Form, you should electronically issue the certificate and deliver it by email. Any document that is required to be issued by a registrar under the *Rules of Civil Procedure* can be issued electronically ([r. 4.05\(1.1\)](#)) and any document that is required to be delivered by a registrar may be sent by email ([r. 4.12\(1\)](#)).

Only one probate certificate may be issued, whether electronically or in paper form. If an electronic certificate was issued, you cannot sign and seal a paper certificate. However, if requested, you can deliver a certified copy of the certificate in paper form by printing the digital certificate and certifying it as a copy. For details see [Section 8](#) – Certificate Issuance.

## 5.6 Form 75.1, Notices of Objection

For the steps to process the filing of a Notice of Objection, Form 75.1, see [Section 14.1](#).

## 5.7 Form 74P, Requests for Notice of Commencement of Proceeding

At any time before a Certificate of Appointment ([Form 74C](#), [74.1C](#) or [74.1E](#)) is issued, a person who has, or appears to have, a financial interest in an estate is entitled to receive notice of the commencement of any proceeding in that estate, unless the court orders otherwise [[r.74.03\(1\)](#)].

A request for notice expires three years after it is filed, however a further request may be filed at any time before a Certificate of Appointment is issued [[r.74.03\(3\)](#)].

### i. Documents that must be Filed

1) Form 74P Request for Notice of Commencement of Proceeding [[Form 74P](#)], and



- 2) Filing fee that is payable or fee waiver certificate.
  - i. [Processing a Request for Notice of Commencement of Proceeding](#)
    - 1) Ensure that a completed Form 74P is filed.
    - 2) Search the Estates system to confirm that a Certificate of Appointment ([Form 74C, 74.1C](#) or [74.1F](#)) has not been issued.
      - a. Where a Form 74C (Rule 74 Certificate) has been issued, inform the filer that the document may not be filed and explain the reason.
      - b. Where a Form 74.1C or 74.1F (Rule 74.1 Certificate) has been issued in the estate, inform the filer that the document may be filed but that they will only be notified of any further Applications for an Amended Small Estate Certificate [[Form 74.1E](#)] if they are filed.
    - 3) If no Certificate of Appointment has been issued, immediately enter the Form 74P Request for Notice of Commencement of Proceeding in the Estates System. Record an expiry date of the document of three years from the date of filing.
    - 4) Collect the applicable fee amount or verify when a fee waiver certificate applies. Using the Financial Management System or cash register, record the amount paid and provide a receipt to the client.

## Section 6. Application Review

### 6.1 Entitlement to apply

Review the Application [[Form 74A](#), [74J](#) or [74.1A](#)].

Review the section “Entitlement to Apply” to determine the basis for the applicant’s entitlement to apply.

This section is found in Part 5 of Form 74A, Form 74.1A and Part 6 of Form 74J.

For multiple applicants, this section may be reproduced for each applicant and should state applicant name(s) before each reproduced section. Statements that do not apply and that are not checked off may be deleted by the applicant from the form.

#### Forms 74A, 74.1A and 74J:

- An applicant who was appointed by court order can check the box:

I am appointed as estate trustee pursuant to a court order dated *(insert date)* *(attach court order)*.

If this box is checked, confirm that the court order is being filed with the application..

#### Forms 74A and 74.1A:

Confirm that the necessary boxes in this section are filled out.

- For individual applicants that they have checked the box:

I am 18 years of age or older.

- For Corporations that they have checked the box:

The applicant is a Corporation and the circumstances of the Corporation’s entitlement to apply are as follows:

\_\_\_\_\_.  
*(attach additional pages if required).*

#### a. Applicants with a Will

The following should be considered to determine the entitlement of an applicant with a Will to apply for a Certificate:

- Has the applicant checked one of the following boxes:

I am named as an estate trustee in the deceased’s Will or codicil dated *(insert date)*.

I am named as an alternate estate trustee in the deceased’s Will or codicil dated *(insert date)*.

- If the applicant is lower in priority to apply (named in the Will as an alternate estate trustee) or equal in priority to other persons, have they checked the box:

All other persons entitled to apply for a certificate of appointment of estate trustee have renounced their right to do so. Identify any other person(s) who have a right to apply:  
\_\_\_\_\_.



Other: \_\_\_\_\_

- If the deceased died without a Will or the applicant is not named as an estate trustee in a Will or Codicil, the applicant can also check one or both of these two boxes:

I am not named as an estate trustee in the Will or codicil, however, consents of persons who together have a majority interest in the value of the assets of the estate at the date of death will be filed together with this application.

I am not automatically entitled to apply. I request a court order on consent pursuant to the *Estates Act* section 29(3) granting me a certificate of appointment of estate trustee (i.e., special circumstances). The basis for this request is as follows:

---

*(attach additional pages if required).*

An order under s.29(3) of the *Estates Act* can be requested on consent through the Application where an applicant can't apply under s.29(1) or 29(2) of the *Estates Act*. Where this order is sought:

1. a consent to the order (Form 74H dated September 1, 2021 or Part B of Form 74G dated November 1, 2023) from each person who is entitled to apply for a Certificate should be filed.
2. a draft order should be filed (Form 74I, the terms can be set out under "Other").
3. the Application must be sent to a Judge for determination. The Judge should be asked to consider:
  - a. the s.29(3) *Estates Act* requirements (including whether a bond should be posted, whether there should be any limits on the administration and whether it is necessary or convenient by reason of the insolvency of the estate of the deceased, or other special circumstances); and
  - b. whether to direct service of the Application on a person who is entitled to apply for a Certificate who is not a beneficiary (a person who was not served with the Application).

Where the consent of the persons who are entitled to apply for a Certificate is not obtained, the applicant can bring a motion on notice to the persons who are entitled to apply.

- If the applicant is lower in priority to apply or equal in priority to other persons, have they checked the box:

All other persons entitled to apply for a certificate of appointment of estate trustee have renounced their right to do so. Identify any other person(s) who have a right to apply:

\_\_\_\_\_.

- Form 74A applicants: should also file renunciation forms together with the Application.
- If the applicant is a spouse or former spouse:
  - in Part 7 of Form 74A or Form 74.1A, they must complete the spousal relationship questions . Review these questions to determine whether the person is entitled to apply for a Certificate of Appointment or Small Estate Certificate. Follow the steps for an applicant spouse or former spouse as set out in Section [6.1.2 “Is the applicant the deceased’s spouse or former spouse”](#).

Where a separated spouse is not entitled to apply due to the terms of a separation agreement, the applicant may file the separation agreement rather than a renunciation form from the separated spouse. In this case, the Application should be directed to a Judge for determination.

Determine whether the applicant is entitled to apply using [Table 8](#) and the information set out in Sections [6.1.1](#) to [6.1.7 “Entitlement to Apply”](#).

If the applicant is not entitled to apply, send the applicant a Registrar’s Notice. If you are uncertain about the entitlement to apply, direct the Application to a Judge. See [Section 9](#), “Registrar’s Notice to Applicant” and [Section 10](#), “Judicial Determination” for more details.

**Table 8. Entitlement of Applicant to apply for a Certificate of Appointment**

Applicant	With a will (applicant is named as estate trustee in will)	Without a will
Resides outside of Ontario, but within Canada or commonwealth	Yes, can apply (s.6 <i>Estates Act</i> )	No, can't apply (s. 5 <i>Estates Act</i> )
Resides outside of Canada or commonwealth	Yes, can apply if a bond is provided or a request is made for an order dispensing with the bond or reducing bond amount (s.6 <i>Estates Act</i> )	No, can't apply (s. 5 <i>Estates Act</i> )
Under the age of 18 years	No, can't apply	No.
Spouse who was married to the deceased at time of death	<p>Yes, unless:</p> <ul style="list-style-type: none"> <li>i. spouse filed an <a href="#">election</a> under s.5 of <a href="#">Family Law Act</a>;</li> <li>ii. spouse named in the will was separated at the time of death (unless the will reflects a contrary intention); or</li> <li>iii. spouses married after the date of the will and before January 1, 2022 - unless an exception applies.</li> </ul> <p><i>Review the date of the will and the marital status at date of death responses in the Application. Direct the Application to a Judge in the case of i., ii. or iii.</i></p> <p><i>If the spouse indicates that they filed an election, ensure that the proof of filing of the election is attached to Application and direct the Application to a Judge.</i></p>	<p>Yes, unless:</p> <ul style="list-style-type: none"> <li>i. i.spouse filed an <a href="#">election</a> under s.5(2) of <a href="#">Family Law Act</a>.</li> </ul> <p><i>If the spouse indicates that they filed an election, ensure that the proof of filing of the election is attached to the Application and direct the Application to a Judge.</i></p> <p><i>If spouses were separated at the time of death, the spouse can apply however the Application should be directed to a Judge.</i></p>

Applicant	With a will (applicant is named as estate trustee in will)	Without a will
Common law spouse	Yes	Yes, can apply (but no right to inherit from the estate and <b>requires a bond</b> . See Section 6.2 “Bonds”)
Spouse divorced (or marriage was annulled)	If marriage was terminated after the date of the will – No, can’t apply unless Will directs otherwise. <i>Check date of will and answers to marital status on the Application.</i> <i>Direct Application to a Judge.</i>	If marriage was terminated by divorce or annulment – No, can’t apply.  <i>Check answers to marital status at date of death on the Application.</i> <i>Direct Application to a Judge.</i>
Children	Yes	Yes
Grandchildren	Yes	Yes (typically if no child living or they renounced their right to apply)
Greatgrandchildren	Yes	Yes (typically if no child/grandchild is living or they renounced their right to apply)
Other lineal descendants	Yes	Yes (typically if deceased left no child or grandchild or they are not living or they renounced their right to apply)
Parent	Yes	Yes (typically if deceased left no child, grandchild or they renounced their right to apply)
Sibling	Yes	Yes (typically if deceased left no child, grandchild or parent or they renounced their right to apply)
Grandparent	Yes	Yes (typically if deceased left no child, grandchild, parent or sibling or they renounced their right to apply)
Aunt/Uncle	Yes	Yes (typically if deceased left no child, grandchild, parent, sibling or grandparent or they renounced their right to apply)
More than one next of kin of the same degree entitled to apply	Yes	All may apply or one may apply, with the consent of all of the others
Creditor of the deceased or nominee of the creditor	Yes	Possibly, if next of kin above consent and have renounced their appointment or they have died

Applicant	With a will (applicant is named as estate trustee in will)	Without a will
Trust Company that is authorized to do business in Ontario	Yes	Yes, if Ontario business status is <a href="#">confirmed</a>
Public Guardian and Trustee	Yes	Yes (PGT must apply directly)



## 6.1.1 Is the applicant applying without a will or applying with a will but is not named in the will as an estate trustee or alternate estate trustee?

### Form 74A and 74.1A:

1) Determine the responses to the following questions in Part 5, Entitlement to Apply:

I am not named as an estate trustee in a Will or codicil of the deceased, AND *[Check all that apply below]*

I am an Ontario resident.

I was legally married to the deceased at the time of death and I have not elected to receive an entitlement under s. 5 of the *Family Law Act*.

I was living with the deceased in a conjugal relationship other than marriage at the time of death.

I am the deceased's *(insert family relationship, if any)*.

Other:  
\_\_\_\_\_.

If the box "I am an Ontario resident" is checked, proceed to step 2.

If the box "I am an Ontario resident" is not checked, and the applicant is applying

*without a Will or with a Will but the person is not named in the will as estate trustee or alternate estate trustee.*

Determine whether an order has been requested pursuant to section 29 of the *Estates Act* and consents filed from the majority of beneficiaries.

If yes, send the application to a judge for determination.

If no, send a Registrar's Notice (see [Section 9](#), "Registrar's Notice").

For an application without a Will indicate that a certificate in Form 74A or 74.1A application without a Will cannot be granted to a person not residing in Ontario [[Estates Act](#) s.5].

For an application with a Will indicate that a certificate in Form 74A or 74.1A application with a will shall not be granted to a person not resident in Ontario or elsewhere in the Commonwealth unless the person has given the required security or a judge has made an order dispensing with the requirement for security or reduced the amount [[Estates Act s.6](#)].

2) Determine if a bond is filed, request is made on consent in the application to dispense with a bond, a motion to dispense with a bond is filed, or a court order was obtained to dispense with the bond requirement.

- If none of these actions were taken, send the applicant a Registrar's Notice (see [Section 6.2](#), Bonds and [Section 9](#), "Registrar's Notice to Applicant").

3) Determine the response to the following questions in Part 5, Entitlement to Apply.

**Form 74A Application:**

- All other persons entitled to apply for a certificate of appointment of estate trustee have renounced their right to do so. Identify any other person(s) who have a right to apply: \_\_\_\_\_ . A renunciation (Form 74G) for each of them will be filed together with this application.
- I am not named as an estate trustee in the Will or codicil, however, consents of persons who together have a majority interest in the value of the assets of the estate at the date of death will be filed together with this application.

If either box is checked, determine whether the applicant has filed the Renunciations and/or Consents ([Form 74H](#) and/or [Form 74G](#) dated September 1, 2021 or [Form 74G](#) dated November 1, 2023) If they have not been filed, send the applicant a Registrar's Notice (see [Section 9](#), "Registrar's Notice to Applicant").

Renunciation forms ([Form 74G](#) dated September 1, 2021 or [Form 74G](#) Part A dated November 1, 2023) should be filed together with Form 74A Applications from:

- a) every person who is entitled to apply for a Certificate of Appointment in priority to or equal right to the applicant/s because they are named as an estate trustee in the Will and they are not applicants in the Application;
- b) every person who is entitled to apply for a Certificate of Appointment in priority to or equal right to the applicant/s pursuant to the *Estates Act* section 29 and who are not applicants in the Application. See [Table 7](#) content on Renunciations. Also see the instructions in Form 74G Part A dated November 1, 2023 which explains when a renunciation is required.

A Renunciation (Form 74G, Part A dated November 1, 2023 or Form 74G dated September 1, 2021) may be filed for a [Form 74A or 74J](#) application, however it is not required for a Form 74.1A (small estate) application.

If the form is filed for a Form 74.1A even though it was unnecessary, do not reject the application but proceed with processing.

A Consent (Form 74G, Part B dated November 1, 2023 or Form 74H dated September 1, 2021), may be filed to indicate consent to a:

- a Form 74A or 74J application (consents of majority of persons who have an interest in the value of assets in the estate); or
- a Form 74A, 74J or 74.1A request for an order to dispense with a bond or reduce a bond amount (consents from all of the beneficiaries).

This is explained in the instructions on the Form 74G Part B dated November 1, 2023.

If a consent form was filed for a small estate application (74.1A) and it was not required, do not reject the application but proceed with processing.

**Form 74.1A Application:**

All other persons entitled to apply have renounced their right to do so.

Identify any other person(s) who have a right to apply:

Confirm that this box is checked. If it is not, send the applicant a Registrar’s Notice (see [Section 9, “Registrar’s Notice to Applicant”](#)).

Renunciation forms are not required for Form 74.1A applications. See [Table 7](#) content on Renunciations.

Consents can be filed for Form 74.1A applications if the applicant is seeking to demonstrate that all of the beneficiaries consent to an order dispensing with a bond or to reduce the amount of a bond.

4) Determine the relationship between the applicant and the deceased.

The spouse or person with whom the deceased was living in a conjugal relationship other than marriage at the time of death usually has the first right to apply, then next-of-kin [[Estates Act](#) s. 29(1)]. The next-of-kin in an intestacy (called heirs-at-law) are determined by the rules of intestate succession [[Succession Law Reform Act](#) ss. 44-49].

The usual preference for priority to be appointed as estate trustee without a Will is as follows:

- 1) Surviving spouse (married spouse) or person with whom the deceased was living in a conjugal relationship other than marriage;
- 2) Children;
- 3) Grandchildren, if no child living;
- 4) Great grandchildren, if no child or grandchild living;
- 5) Other lineal descendants (i.e. great-great grandchild);
- 6) Father or mother, if deceased left no lineal descendant (no child, grandchild, great-grandchild etc.);
- 7) Brothers, sisters, if deceased left no lineal descendant (no child, grandchild, great-grandchild etc.) and no parent;
- 8) Grandparent or grandparents, if deceased left no lineal descendant (no child, grandchild, great-grandchild etc.) and no parent, and no sibling;

- 9) Other next-of-kin (e.g. Uncles, aunts, nephews, nieces and great-grandparents), if deceased left no lineal descendant (no child, grandchild, great-grandchild etc.) and no parent, sibling, or grand-parent.

Where there is more than one next-of-kin of the same degree entitled to apply, either all may apply or one (or more) may apply with the consent of all others.

The surviving married spouse or person with whom the deceased was living in a conjugal relationship other than marriage can apply together with the next of kin ([Estates Act](#) s. 29(1)(c)). For example, a spouse and a child may apply together.

Guidance on the definition of a child is now provided in Part 7, section C. as follows:

*“a child inside or outside of marriage, adopted a child, was declared to be a child’s parent by court order or had a child who was born after the deceased’s death; see definition of “child” under s.1 of the Succession Law Reform Act and definition of “child” and “parent” in Part 1 of the Children’s Law Reform Act”*

The court is not required to appoint an estate trustee without a Will in the above order of preference. The court may appoint whomever it deems to be the most appropriate person [[Estates Act](#) s. 29(1)].

The next-of-kin with a prior right may renounce their right to apply. Next-of-kin with an equal right to apply may also renounce their right to apply. A Renunciation ([Form 74G](#) dated September 1, 2021 or [Form 74G](#) Part A dated November 1, 2023) must be filed in a Form 74A Application where there is no Will from every person who is entitled in priority or equal right to apply for a Certificate and who has not joined in the Application as an applicant (persons identified in s.29 of the *Estates Act*). A Renunciation does not need to be filed for a Form 74.1A (small estates) Application. See [Table 7](#) content on Renunciations.

The nominee of a majority of the beneficiaries of equal standing may apply. For Form 74A Applications Consents are required from the beneficiaries with a majority interest. The person must be an Ontario resident [[Estates Act](#) s. 29(2)].

Where the next-of-kin are not willing to be appointed or die before obtaining an appointment, the court may appoint another person, such as a creditor of the deceased or a nominee of the deceased’s creditors [[Estates Act](#) s. 29(3)].

A trust company authorized to do business in Ontario may be appointed either alone or with another person as an estate trustee [[Loan and Trust Corporation Act](#) ss. 31.1 & 175; s. 29(2)(3)(4) [Estates Act](#)]. Where a trust company is applying, determine whether the trust company is authorized to do business in Ontario: <http://loanandtrust.fsc.gov.on.ca/loantrust.aspx>. If there are no known adult next-of-kin living in Ontario that are willing and able to administer the estate, or the only next-of-kin are minors and there is no near relative in Ontario willing to administer the estate or to nominate another person to do so, the Public Guardian and Trustee may apply [s.1 [Crown Administration of Estates Act](#)]. Notice must be sent to the Public Guardian and Trustee (see [Section 6.3.2](#)).

- 5) If the registrar has any doubt about the information contained in an Application or the appointment of the applicant, the Application must be referred to a Judge for determination [\[R.74.14\(4\), 74.1.04\(4\)\]](#).

## 6.1.2 Is the applicant the deceased's spouse or former spouse?

Determine if the applicant is a spouse or former spouse by reviewing the answers to these questions in **Form 74A and 74.1A**:

Part 1, Information about the deceased, Marital Status at date of death:

Not Married  Married  Common Law Partner  Separated  Widowed  Divorced

Part 5, Entitlement to Apply:

I am not named as an estate trustee in a Will or codicil of the deceased, AND *[Check all that apply below]*

I am an Ontario resident.

I was legally married to the deceased at the time of death and I have not elected to receive an entitlement under s. 5 of the *Family Law Act*.

I was living with the deceased in a conjugal relationship other than marriage at the time of death.

I am the deceased's *(insert family relationship, if any)*.

In addition, for **Form 74A and 74.1A** determine the spousal status by reviewing the answers to the questions in Part 7, Deceased's Relationships.

See [Section 9.5](#) for circumstances relating to marital status at date of death where a Registrar's Notice should not be delivered.

6.1.2.1 Applicant spouse was married to the deceased

### a. Applications with a Will

An applicant with a Will who was married to the deceased at the date of death can apply to act as estate trustee unless:

1. the applicant spouse filed an [election](#) under s.5 of [Family Law Act](#);
2. the spouses were separated at the time of death (unless the Will reflects a contrary intention); or
3. the spouses married after the date of the Will and before January 1, 2022 - unless an exception applies.

**For Form 74A and 74.1A:** Review the answers to Part 7, Information about the Deceased's Relationships, questions A.1. 2. and 3 and B.1:

**A. Complete if applying with a Will or without a Will**

1.	<p>a. Was the deceased ever married?</p> <p><i>If yes, complete questions 2 to 4. Also, complete Section B if applying with a Will. If no, complete Section C if applying without a Will or go to Part 8 if applying with a Will.</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	<p>a. Was the deceased married at the time of death?</p> <p>b. <i>If the answer to (a) is “yes”,</i> were the deceased and their spouse separated and at the time of death living separate and apart as a result of the breakdown of their marriage? (<i>Separation is defined in ss. 17 and 43.1 of the Succession Law Reform Act</i>). Give details here or in an attached schedule:</p> <p>c. <i>If the answer to (a) is “yes”,</i> is the name of the married spouse set out in Part 6 - Beneficiaries?</p> <p>d. <i>If the answer to (c) is “no”,</i> provide the name and address of the married spouse</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Yes <input type="checkbox"/> No
3	<p>a. Is the married spouse of the deceased an applicant?</p> <p>b. <i>If the answer to (a) is “yes”,</i> has the spouse elected to receive an entitlement under the <i>Family Law Act</i> s. 5?</p> <p>c. <i>If the answer to (b) is “yes”,</i> explain why the spouse is entitled to apply. Give details here or in an attached schedule:</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No

**B. Complete if applying with a Will**

1.	<p>a. Is the Will dated earlier than January 1, 2022?</p> <p>b. <i>If the answer to (a) is “yes”,</i> did the deceased person marry after the date of the Will and before January 1, 2022?</p> <p>c. <i>If the answer to (b) is “yes”,</i> explain why the Will was not revoked by marriage (i.e., declaration in the Will that it was made in contemplation of marriage or spouse filed an election to take under the Will). Give details here or in an attached schedule:</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Yes <input type="checkbox"/> No
----	---	--

If the answer to A.1.a. is “Yes”, review the answers to A.2 and 3 and B.1.

You can proceed with the processing of the application if the response is “No” to questions

- A.2.a. or b.; and
- A.3.a. or b.; and
- B.1.a. or b.

If the answer to any of these questions is “Yes”, take the steps set out in the appropriate section:

“Applicant spouse was separated from the deceased at time of death”, ([Section 6.1.2.3](#)).

“Applicant spouse elected equalization under *Family Law Act*” ([Section 6.1.2.5](#)), OR

“Applicant spouse married after the date of the Will and before January 1, 2022”([Section 6.1.2.6](#)).

## b. Applications without a Will

A spouse who was married at the time of death can apply without a Will to act as estate trustee unless:

1. the spouse filed an [election](#) under s.5 of the [Family Law Act](#).

If the spouse is the applicant and indicates that they filed an election, ensure that proof of filing of the election is filed together with the Application. Then direct the Application to a Judge.

Review the answers to Sections A of Part 7, Information about the Deceased's Relationships (reproduced under a. Applications with a Will).

If the answer to A.1.a. is "Yes", review the answers to A.2. and A.3.

You can proceed with the processing of the Application if the responses indicate "No" to questions:

- A.2.a. or b.; and
- A.3.a. or b.; and
- B.1.a or b.

If the answer to any of these questions is "Yes", take the steps set out in the appropriate section:

"Applicant spouse was separated from the deceased at time of death", ([Section 6.1.2.3](#)).

"Applicant spouse elected equalization under *Family Law Act*" ([Section 6.1.2.5](#))

## c. All Applications (Applications with and without a Will)

The question of FLA [election](#) of an applicant spouse can also be determined by reviewing the answer to this question (Part 5, Entitlement to Apply).

I was legally married to the deceased at the time of death and I have not elected to receive an entitlement under s. 5 of the *Family Law Act*.

If this box is not checked, direct the Application to a Judge.

You can process the application where an applicant is the married spouse at the date of death and was:

1. the only spouse of the deceased (as determined from the details in the Application or schedule provided under Part 7 A.2.b. or 4.a. indicates only 1 marriage);
2. not separated from the deceased at date of death (as determined from the answer to Part 7 A.2.b. and Part 1 questions on marital status at the date of death);
3. did not elect equalization under the FLA (as determined from the answer to Part 7 A.3.b. and Part 5);



4. did not marry the deceased after the date of the Will and before January 1, 2022 (as determined by the answer to Part 7 B.1.b.).

6.1.2.2 Applicant spouse was common law partner of the deceased

a. Applications with a Will

If the deceased’s common law spouse is named as estate trustee in the Will, they may apply for appointment as estate trustee.

b. Applications without a Will

A person with whom the deceased was living in a conjugal relationship other than marriage immediately before death may apply for appointment as estate trustee. [s.29 (1) [Estates Act](#)]. This common law spouse may have a prior right or an equal right with the deceased’s married spouse to apply for appointment.

In an application without a Will, a common law spouse applicant must address the bond requirement. A common law spouse cannot rely on s.36(2) of the *Estates Act* to seek to dispense with the bond requirement. A common law spouse has no right to share in a distribution of the Estate on an intestacy.

The issue of whether a common law spouse or a married spouse should be appointed as estate trustee can be complex.

Determine whether the deceased’s marital status at date of death was “common law” and “married” (in Part 1).

Determine whether this box was checked in Part 5 – Entitlement to Apply:

I was living with the deceased in a conjugal relationship other than marriage at the time of death.

Determine the answer to Part 7, Question C.1.a. in Part 7:

1.	<p>a. Was the deceased person living with a person in a conjugal relationship other than marriage immediately before their death?</p> <p>b. <i>If the answer to (a) is “yes”, provide the name of the person who was living with the deceased (insert more rows if needed or attach a schedule):</i></p> <p>_____.</p> <p><i>Note: a person living with the deceased in a conjugal relationship other than marriage should not be listed in Part 6 – Beneficiaries.</i></p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
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Where the answer to Part 7, Question C.1.a. is “Yes” OR

Part 5 box was checked to indicate that the deceased was living in a conjugal relationship other than marriage at the time of death, take the following steps:

- a. determine if the required details are provided in Part 7, Question C.1.b. or in a schedule.
  - b. if the required details (or schedule) is missing, send a Registrar's Notice.
  - c. if the required details (or schedule) was provided, direct the Application to a Judge for determination.
- Provide the Judge with a summary of the issue. Advise the Judge that the deceased was living in a conjugal relationship other than marriage.
  - Explain who is applying to act as estate trustee, the relationship of the applicant to the deceased (common law partner, married partner, another person) and whether there are persons who have or may have a prior right to apply.

For example, explain that the common law partner is applying but the deceased died with a married spouse and no Renunciation or Consent ([Form 74G](#) or [Form 74H](#) dated September 1, 2021 or [Form 74G](#) dated November 1, 2023) was filed.

The Judge may want to consider whether there should be any limits on the authority of the applicant if they are appointed as estate trustee since they do not have a right to share in the distribution of the estate.

#### 6.1.2.3 Applicant spouse was "separated" from the deceased

##### a. Applications with a Will

A separated spouse cannot act as estate trustee under the Will where the spouse is separated from the deceased at the time of death ([Succession Law Reform Act](#) s.17(2)(3)). In addition, any gifts to the spouse are void in this circumstance. The separated spouse is deemed to have predeceased the testator. ([Succession Law Reform Act](#) s. 17(2)(3),43.1).

A spouse is considered to be separated from the deceased person at the time of the person's death if,

- (a) before the person's death,
  - (i) they lived separate and apart as a result of the breakdown of their marriage for a period of three years, if the period immediately preceded the death,
  - (ii) they entered into an agreement that is a valid separation agreement under Part IV of the [Family Law Act](#),
  - (iii) a court made an order with respect to their rights and obligations in the settlement of their affairs arising from the breakdown of their marriage, or
  - (iv) a family arbitration award was made under the [Arbitration Act, 1991](#) with respect to their rights and obligations in the settlement of their affairs arising from the breakdown of their marriage; and
- (b) at the time of the person's death, they were living separate and apart as a result of the breakdown of their marriage.

([Succession Law Reform Act](#) s. 43.1).

Any of the events listed above must have occurred on or after January 1, 2022, except that in the case of (a)(i) the spouses must also have begun to live separate and apart on or after January 1, 2022.

**b. Applications without a Will**

If the deceased was married immediately before death, their spouse can apply for appointment as estate trustee [[Estates Act](#), s.29(1)(a)] even though the spouses were separated (unless the spouse filed an [election](#) under s.5 of the [Family Law Act](#)).

However, if the applicant was married but separated from the deceased at the time of death, the Application should be directed to a Judge for determination.

- 1) Determine whether the applicant is a separated spouse by taking the following steps:
- 2) Review the Will, if any, to determine the name of the estate trustee (and whether the person is referred to as “spouse”).
- 3) Review the Application form (Form 74A or 74.1A) to determine the name of the applicant and to determine whether “separated” is indicated in the marital status at date of death section.
- 4) Review the answer to Part 7, Question A.2., in Deceased’s Relationships:

2.	<p>a. Was the deceased married at the time of death?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>b. <i>If the answer to (a) is “yes”,</i> were the deceased and their spouse separated and at the time of death living separate and apart as a result of the breakdown of their marriage? <i>(Separation is defined in ss. 17 and 43.1 of the Succession Law Reform Act).</i> Give details here or in an attached schedule:</p> <p>_____.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

Where the answer to Part 7, Question A.2.b is “Yes” take the following steps:

- a. determine if the required details are provided in Part 7, Question A.2.b. or in a schedule.
  - b. if the required details (or schedule) is missing, send a Registrar’s Notice.
  - c. if the required details (or schedule) was provided, direct the Application to a Judge for determination.
- Provide the Judge with a summary of the issue. Indicate that the application indicates that the spouses were separated.
  - Explain who is applying to act as estate trustee, the relationship of the applicant to the deceased (separated spouse, another person) and whether there are persons who have or may have a prior right to apply.

- For example, explain that the separated spouse is applying but the deceased died with a common law partner and no Renunciation ([Form 74G](#) dated September 1, 2021 or [Form 74G](#) Part A dated November 1, 2023) was filed.
- The Judge may want to consider whether there should be any limits on the authority of the applicant if they are appointed as estate trustee since they do not have a right to share in the distribution of the estate.

6.1.2.4 Applicant spouse was divorced from the deceased (or marriage was annulled)

a. Applications with a Will

A former spouse cannot act as estate trustee where the marriage of the testator is terminated by divorce or annulment after the Will is made. In addition, any gifts to the former spouse are void in this circumstance. The former spouse is deemed to have predeceased the testator. [[Succession Law Reform Act](#) s. 17(2)(a)(b)(c)].

The exception to this rule is where the Will indicates that the termination of the marriage should not revoke the appointment of the former spouse as estate trustee or gifts to the former spouse.

Review the Will to determine the name of the estate trustee. The Will may or may not refer to the person as a “spouse”.

Review the Application form (Form 74A or 74.1A) to determine the name of the applicant and to determine whether “divorced” is indicated in the marital status at date of death section.

Review the answer to Part 7, Question A.1. and 4, Deceased’s Relationships

A. Complete if applying with or without a Will

1.	<p>a. Was the deceased ever married?</p> <p><i>If yes, complete questions 2 to 4. Also, complete Section B if applying with a Will. If no, complete Section C if applying without a Will or go to Part 8 if applying with a Will.</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
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4.	<p>a. Were any of the deceased’s marriages terminated by divorce or a declaration of nullity?</p> <p>b. <i>If the answer to (a) is “yes”, provide the name of the former spouse and the date of divorce or declaration of nullity. If there is a Will, indicate whether the date of divorce or declaration of nullity is after the date of the Will (insert more rows if needed or attach a schedule)</i> _____.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
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Where the answers to Part 7, Question A.1.a. and A.4.a is “Yes” take the following steps:

- a. determine if the required details are provided in Part 7, Question A.4.a. or in a schedule.
  - b. if the required details (or schedule) is missing, send a Registrar’s Notice.
  - c. if the required details (or schedule) was provided, direct the Application to a Judge for determination.
- Provide the Judge with a summary of the issue. Indicate that the application indicates that the deceased was divorced or their marriage was annulled.
  - Explain who is applying to act as estate trustee, the relationship of the applicant to the deceased (divorced spouse, another person) and whether there are persons who have or may have a prior right to apply.
  - For example, explain that the divorced spouse is applying but the deceased died with adult children and no Renunciation ([Form 74G](#) dated September 1, 2021 or [Form 74G](#) Part A dated November 1, 2023) was filed.
  - The Judge may want to consider whether there should be any limits on the authority of the applicant if they are appointed as estate trustee since they do not have a right to share in the distribution of the estate.

Ask the Judge to consider whether:

1) the appointment of the former spouse named as estate trustee in the Will (or Codicil) and/or gifts in the Will to the former spouse are revoked pursuant to s.17 of the [Succession Law Reform Act](#);

2) the Registrar should indicate on the Certificate [pursuant to [R.74.12\(5\)](#)] that:

- a. Appointment of (name of former spouse) as estate trustee (or trustee) under the Will (or Codicil) is revoked by reason of s.17 of the [Succession Law Reform Act](#); and/or
- b. Devise or bequest to (name of former spouse) under the Will (or Codicil) is revoked by reason of s.17 of the [Succession Law Reform Act](#) (see [s.6.6.2 Is a gift to a former spouse or separated spouse under the Will void](#))

If a Judge makes an order voiding a devise or bequest of a beneficial interest under a Will or Codicil or declaring that a person named in the application as a person who is entitled to share in the distribution of the estate does not have an interest in the estate, you must note that fact (the terms of the order) and the date the order was made on the Certificate of Appointment of Estate Trustee (r.74.12(5)).

b. Applications without a Will

For applications without a will, review the answers to Part 7, Question A.1.a. and 4a.b., and C.2.

The questions in section A.1.a. and A.4.a. are reproduced under “Applications with a Will”.

The questions in section C.2. are reproduced below.

C. Complete if applying without a Will

2.	<p>a. Did the deceased have any children?</p> <p><i>(Select “yes” if the deceased had a child inside or outside of marriage, adopted a child, was declared to be a child’s parent by court order or had a child who was born after the deceased’s death; see definition of “child” under s.1 of the Succession Law Reform Act and definition of “child” and “parent” in Part 1 of the Children’s Law Reform Act).</i></p> <p>i. <i>If the answer to (a) is “yes”,</i> is the name and address of each surviving child of the deceased set out in Part 6 - Beneficiaries?</p> <p>ii. <i>If the answer to (a)(i) is “no”,</i> provide the names and addresses of the children who are not listed in Part 6 - Beneficiaries. If any of these children are minors, provide their dates of birth <i>(insert more rows if needed or attach a schedule)</i>:</p> <p>_____</p> <p><i>If the answer to 2(a) is “yes”, answer questions 2(b) and 2(c).</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>b. Did the deceased have a child or children who died before the deceased?</p> <p>i. <i>If the answer to (b) is “yes”,</i> provide the name(s) of the child or children who died before the deceased <i>(insert more rows if needed or attach a schedule)</i>:</p> <p>_____</p> <p>ii. <i>If the answer to (b) is “yes”,</i> are the surviving children or grandchildren of each child who died before the deceased listed in Part 6 - Beneficiaries?</p> <p>iii. <i>If the answer to (b)(ii) is “no”,</i> provide the names and addresses of the deceased child’s surviving children or grandchildren (if any). If any of them are minors, provide their dates of birth <i>(insert more rows if needed or attach a schedule)</i>.</p> <p>_____</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A (none)  <input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>c. Did the deceased have a child or children who died after the deceased?</p> <p>i. <i>If the answer to (c) is “yes”,</i> are the name(s) and addresses of the beneficiaries of the estate of each deceased child listed in Part 6 - Beneficiaries?</p> <p>ii. <i>If the answer to (c)(i) is “no”,</i> provide the name(s) and addresses of the beneficiaries of the estate of each deceased child <i>(insert more rows if needed or attach a schedule)</i>.</p> <p>_____</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

The questions in A.4. and C.2. relate to the right of the applicant, and other persons surviving at the time of death of the intestate deceased, to apply to be appointed as estate trustee without a Will (and the rights of the deceased’s children and grandchildren to service of the application).

If an earlier marriage of the deceased was not terminated properly, then a judge may find a subsequent marriage of the deceased not to be recognized under the law. This may have an impact on who may be appointed estate trustee without a Will. If a marriage was terminated by divorce, a judge may find that another person should be appointed as estate trustee.

Where the answer to Part 7, Question A.4.a. is “Yes” take the following steps:

- a. determine if the required details/schedule are provided in Part 7, Question A.4.b. or in a schedule.
  - b. if the required details/schedule is missing, send a Registrar’s Notice.
  - c. if the required details/schedule was provided, direct the Application to a Judge for determination.
- Provide the Judge with a summary of the issue. Indicate that the application indicates that the deceased was divorced or their marriage was annulled.
  - Explain who is applying to act as estate trustee, the relationship of the applicant to the deceased (divorced spouse, another person) and whether there are persons who have or may have a prior right to apply.
  - For example, explain that the divorced spouse is applying but the deceased died with children and no Renunciation ([Form 74G](#) dated September 1, 2021 or [Form 74G](#) Part A dated November 1, 2023) was filed.
  - The Judge may want to consider whether there should be any limits on the authority of the applicant if they are appointed as estate trustee since they do not have a right to share in the distribution of the estate.

#### 6.1.2.5 Applicant spouse elected an equalization of net family properties under the Family Law Act, s.5(2)

A deceased’s spouse who elects to take an equalization share of the estate under s. 5 of the [Family Law Act](#) rather than under the Will, cannot be appointed as estate trustee. [*Reid v. Reid Martin* (1999) 35 E.T.R. (2d) 267; (1999) 11 R.F.L. (5<sup>th</sup>) Div. Ct.]

The [election](#) is filed in Toronto with the Estate Registrar for Ontario.

A spouse who fails to make an [election](#) is deemed to take what is given under the Will or by intestacy [ss. 6 (10) (11) [Family Law Act](#)].

Where the Application indicates that the married spouse is the applicant, and the spouse is not named as the estate trustee in the Will, review the answer to this question (Entitlement to Apply, Part 5):

I was legally married to the deceased at the time of death and I have not elected to receive an entitlement under s. 5 of the *Family Law Act*.

Direct the Application to a Judge. Point out the answer to this question to the Judge.

In **Form 74A and 74.1A**, determine the answer to this question (Part 7 Deceased's Relationships, Question A.3.b. and c.):

3.	<p>a. Is the married spouse of the deceased an applicant?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>b. <i>If the answer to (a) is "yes"</i>, has the spouse elected to receive an entitlement under the <i>Family Law Act s. 5</i>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>c. <i>If the answer to (a) is "yes"</i>, explain why the spouse is entitled to apply. Give details here or in an attached schedule:</p>	

Take the following steps where the answer to Part 7, Question A.3.b. is "Yes"

- a. determine if the required details/schedule are provided in Part 7, Question A.3.c. or in a schedule.
  - b. if the required details/schedule is missing, send a Registrar's Notice.
  - c. if the required details/schedule was provided, direct the Application to a Judge for determination.
- Provide the Judge with a summary of the issue. Indicate that the application indicates that the deceased's spouse elected to receive an entitlement under the FLA s.5.
  - Explain who is applying to act as estate trustee, the relationship of the applicant to the deceased and whether there are persons who have or may have a prior right to apply.
  - For example, explain that the deceased's spouse is applying but they have elected an entitlement under the [Family Law Act](#) s.5(2). Point out the case of *Reid v. Reid Martin*.

6.1.2.6 Did the applicant spouse marry after the date of the Will and before January 1, 2022?

Effective January 1, 2022 a Will that is executed by the testator prior to a marriage after December 31, 2021 is no longer revoked by marriage ([Accelerating Access to Justice Act, 2020 repealed s.16 of the SLRA](#)).

If the deceased married after the date of the Will and before January 1, 2022, the Will may be revoked by the marriage of the testator and the testator deemed to have died intestate (i.e., without a Will).

In Form 74A, determine the answer to Part 7 Question B.1.:

1.	<p>a. Is the Will dated earlier than January 1, 2022?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>b. <i>If the answer to (a) is "yes"</i>, did the deceased person marry after the date of the Will and before January 1, 2022?</p>	<input type="checkbox"/> Yes



<p>c. <i>If the answer to (b) is “yes”, explain why the Will was not revoked by marriage (i.e., declaration in the Will that it was made in contemplation of marriage or spouse filed an election to take under the Will). Give details here or in an attached schedule:</i></p> <hr/>	<input type="checkbox"/> No
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Take the following steps where the answer to Part 7, Question B.1.b. is “Yes”

- a. determine if the required details are provided in Part 7, Question B.1.c. or in a schedule.
- b. if the required details (or schedule) is missing, send a Registrar’s Notice.
- c. if the required details (or schedule) was provided, direct the Application to a Judge for determination.

- Provide the Judge with a summary of the issue.

6.1.2.7 Was the deceased widowed at the time of death?

Determine if the deceased was widowed by reviewing the answers to this Question in Part 1, Information About The Deceased in **Form 74A and 74.1A:**

Marital Status at date of death (*check all the apply*):

- Not Married  Married  Common Law Partner  Separated  Widowed  Divorced

Where “widowed” is selected, determine the answer to Part 7, Question A.2a.

2.	<p>a. Was the deceased married at the time of death?</p> <p>b. <i>If the answer to (a) is “yes”, were the deceased and their spouse separated and at the time of death living separate and apart as a result of the breakdown of their marriage? (Separation is defined in ss. 17 and 43.1 of the Succession Law Reform Act). Give details here or in an attached schedule:</i></p> <hr/> <p>c. <i>If the answer to (a) is “yes”, is the name of the married spouse set out in Part 6 - Beneficiaries?</i></p> <p>d. <i>If the answer to (c) is “no”, provide the name and address of the married spouse</i></p> <hr/>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
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Proceed with the processing of the application if:

- the marital status at date of death indicates “widowed” and
- the answer to Part 7 Question A.2.a. indicates “No”.

If the answer to Part 7 Question A.2.A indicates ‘Yes’ and marital status is “widowed”:

- determine whether information provided in other parts of the application indicate that there is no surviving spouse or do not suggest a surviving spouse.

Examples of other parts of the application which may provide information about a spouse who pre-deceased the deceased include:

- Forms 74A and 74.1A, Part 7 Question A.4., Part 5, Entitlement to Apply and/or
- Forms 74B/74B.1 and 74.1B, reason beneficiary was not served.

If you are satisfied that the deceased was widowed and did not have a surviving spouse, proceed with processing the application.

### 6.1.3 Is the applicant the parent or guardian of a minor named in the Will as estate trustee?

If the Will names a minor (person under the age of 18 years) as the sole estate trustee, the minor's guardian may apply for a Certificate. A minor cannot apply for appointment as estate trustee [[Estates Act](#), s. 26].

Review the Application (Form 74A or 74.1A) and determine if:

- the Application indicates that the person named in the Will as estate trustee is not applying because they are a minor
- the applicant is an Ontario resident (if not named in the Will as an estate trustee)
- there are any conditions in the Will that make an appointment as estate trustee conditional upon the person surviving the testator for a certain number of days (see [Section 6.3.3](#))
- the applicant is not named in the Will as an alternate estate trustee (if so, take the steps set out in [Section 6.1.1](#)).

Direct the Application to a Judge. Prepare a summary of the issue and indicate that the Judge may consider directing the addition of the following to the Certificate of Appointment (pursuant to s.26 of the [Estates Act](#)):

"Right of (name of minor) to be appointed estate trustee on attaining 18 years of age is reserved."

#### 6.1.4 Is the applicant applying in the place of a mentally incapable person who has a right to apply?

Where a mentally incapable person has the right to apply to act as estate trustee (named in the Will or is the next of kin on an intestacy), another person may apply for the Certificate of Appointment.

Review the Application (Form 74A or 74.1A). Determine if:

- the Application indicates that a mentally incapable person has a prior right to apply to act as estate trustee
- a person with a continuing power of attorney for the mentally incapable person signed a renunciation and consent on behalf of the mentally incapable person (ensure that the names of the person in the Will and the name of the person in the power of attorney match)
- evidence is filed with respect to the condition of the mentally incapable person (letter or a certificate from a legally qualified medical practitioner stating that they examined the person and find that because of a medical condition that the person would be incapable of acting as estate trustee and is not expected to become capable, or that the condition is temporary)
- the applicant is an Ontario resident (if not named in the Will as an estate trustee)
- there are any conditions in the Will that make an appointment as estate trustee conditional upon the person surviving the testator for a certain number of days (see [Section 6.3.3](#))
- the applicant is not named as an alternate estate trustee in the Will (if so, take the steps outlined under [Section 6.1.1](#))

Direct the Application to a Judge. Prepare a summary of the issue and indicate that the Judge may consider directing the addition of the following to the certificate of appointment:

- "Right of (name of mentally incapable person) to be appointed estate trustee is reserved."

## 6.1.5 Is the applicant a Corporation, ministry or government agency?

### 6.1.5.1 Applicant is a Corporation

A trust company authorized to do business in Ontario may be appointed either alone or with another person as an estate trustee [[Loan and Trust Corporation Act](#) ss. 31.1 & 175; s. 29(2)(3)(4) [Estates Act](#)]. Where a trust company is applying, determine whether the trust company is authorized to do business in Ontario: <http://loanandtrust.fsco.gov.on.ca/loantrust.aspx>.

### 6.1.5.2 Applicant is the Public Guardian and Trustee

The Public Guardian and Trustee may apply to act as an estate trustee. A bond is not required to be posted by the Public Guardian and Trustee ([Crown Administration of Estates Act](#), s.4).

### 6.1.5.3 Applicant is National Trust Company

The [Bank of Nova Scotia Trust Company Act, 2000](#) provides that as of August 1, 2001, The Bank of Nova Scotia Trust Company assumes the business of the National Trust Company including the business of acting as estate trustee and guardian of property of incapable adults. The legislation allows The Bank of Nova Scotia Trust Company to become successor trustee without making an Application to the court. It also allows any legal proceeding by or against the National Trust Company to be continued in the name of The Bank of Nova Scotia without an order to continue.

Where an Application for appointment of estate trustee with a Will or other document is filed on and after August 1, 2001, and the National Trust Company is named in the Will as estate trustee or guardian of property,

1. Prepare a note in the Estates System to indicate that:

*"The Bank of Nova Scotia Trust Company is seeking appointment as successor trustee to National Trust Company pursuant to [the Bank of Nova Scotia Trust Company Act, 2000](#)."*

2. Process the Application.

## 6.1.6 Is the applicant not the deceased's next-of-kin and there are no adult next-of-kin to nominate an applicant in Ontario?

Where the deceased died without a Will, the applicant is not the deceased's next of kin and there are no adult next of kin to nominate an applicant in Ontario, the registrar must send notice to the Public Guardian and Trustee before a Certificate of Appointment can be issued to another person ([Crown Administration of Estates Act](#), s.3). Within 30 days of receipt of the notice the Public Guardian must either consent to the person's Application or make their own Application for appointment as estate trustee.

If the Public Guardian and Trustee provides to the court a consent to another person's appointment as estate trustee, a Certificate of Appointment can be issued to the person without waiting for the expiry of the thirty days.

Review the Application without a Will. If the applicant is not the deceased's next of kin and there are no adult next of kin to nominate an applicant in Ontario:

1. send a notice to the Public Guardian and Trustee by email to:  
[PGT-Legal-Documents@ontario.ca](mailto:PGT-Legal-Documents@ontario.ca).
2. Attach a copy of the Application to the email to the Public Guardian and Trustee.

Where the Public Guardian and Trustee opposes the applicant's appointment and takes steps to apply for appointment as estate trustee without a Will, the Application must be sent to a Judge for determination.

### 6.1.7 Is the applicant applying for a Certificate of Appointment of Estate Trustee with a Will Limited to the Assets referred to in the Will or does the Will or application refer to a secondary Will?

Where the deceased has left two or more valid Wills, an estate trustee may apply for a Certificate of Appointment of Estate Trustee Limited to Assets in one Will only (using Form 74A). The declared value of the estate in such an application is the value of the assets covered by the Will submitted with the Application.

These applications will have the following box is checked in Form 74A:

- Certificate of Appointment of Estate Trustee with a Will
- Certificate of Appointment of Estate Trustee with a Will Limited to the Assets Referred to in the Will
- Certificate of Appointment of Estate Trustee without a Will

Where this box checked, direct to a Judge the Application and the draft order (Form 74I).

Indicate to the Judge what the responses are to Question 3. in Part 8, Declarations:

3. I:

*(Complete only if you are seeking a Certificate of Appointment of Estate Trustee Limited to the Assets Referred to in the Will and/or the deceased executed a secondary (or other multiple Will(s)) that deals with the assets referred to in that Will(s)).*

- confirm that the secondary (or other multiple) Will(s) has/have not revoked the Will I am seeking to probate.
- will file together with this application a draft order (Form 74I).

If a Judge makes an order directing the issuance of a Certificate of Appointment of Estate Trustee With A Will Limited To The Assets Referred To In The Will, the Certificate (Form74C) may be issued. A copy of the Will submitted with the Application should be attached to the issued Certificate.

Where an Application (74A or 74.1A) or Will refers to a secondary Will, direct the Application to a Judge (even if the applicant did not indicate that they are applying for a Certificate of Appointment of Estate Trustee Limited to Assets in the Will). Do not issue a Certificate in this situation unless a judge's order directs the issuance.

In this case, you should ask the Judge to consider whether to refuse the application on the basis that:

- 1) a secondary Will is referred in the Application (and/or in the Will submitted)
- 2) the applicant has not filed the necessary documents to seek a Certificate Limited to the Assets Referred to in the Will (did not file a draft order Form 74I that seeks an order for a Certificate Limited to the Assets Referred to in the Will or a Form 74A application seeking a Certificate of Appointment of Estate Trustee with a Will Limited to the assets referred to in the Will) as required by rule 74.04(1))
- 3) the disclosures made by the applicant in Part 3 and 4 of the Application form may not be correct.
  - a. The rules and legislation governing the small estate process do not permit a Certificate limited to the assets referred to in one will. Rule 74.04, the regular application process, allows such a Certificate to be issued. Form 74.1A requires the disclosure of "each asset owned by the deceased" and the "total value of the estate" and it would appear that there is no authority to limit the disclosures to the assets covered by the Will. The *Estates Act* regulation which prescribes a small estate value prescribes the value for the entire estate (O. Reg. 112/21), rather than a value for the assets covered in one Will only.

Where there is a secondary Will and a Judge directs the issuance of a certificate by court order, issue the certificate in the manner set out in [Section 8.2.2](#) and include the statement directed in paragraph (8) of that section.

### 6.1.8 Is the applicant applying for a Certificate of Appointment of Estate Trustee with a Joint Will?

Spouses may execute a joint Will. Where one of the spouses dies, the joint Will is filed together with the Application for a Certificate of Appointment of that spouse's estate.

When the second spouse dies, their estate trustee may file a certified copy of the joint Will, together with a schedule indicating the Superior Court of Justice location and court file number for the original Will.

### 6.1.9 Is the applicant applying with a different name than their name in the Will?

If the Applicant's name in the Will is different from the name stated in the Application, the applicant should provide the name in the Will and explain the reason for the difference in the Application.

This direction is set out in Forms 74A and 74.1A in the applicant contact section.

### 6.1.10 Is the applicant applying for the wrong type of certificate?

Where an applicant selects the wrong certificate type in the Application form (Form 74A or 74J) send a Registrar's Notice advising of the issue and informing the applicant that they are entitled to file a new Application seeking a different type of certificate.

Example: Applicant files a Form 74A seeking a Certificate of Appointment of Estate Trustee with a Will. The Will refers to a primary and secondary will. In this case, you should send a Registrar's Notice advising that:

- 1) Since the will refers to a primary and secondary will the Certificate sought cannot be issued. The Certificate sought would authorize an estate trustee to receive and manage all estate assets rather than the limited assets referred to in the Will.
- 2) The applicant can file a Form 74A Application seeking a Certificate of Appointment of Estate Trustee with a Will Limited to the Assets Referred to in the Will. This Certificate, if granted, would authorize the estate trustee to receive and manage the assets referred to in the Will that is probated.

Where an applicant/filer disputes that that they have selected the wrong certificate type in the Application form, direct the Application to a Judge.

## 6.2 Bonds

An estate administration bond is posted by an applicant for a Certificate of Appointment to assure that they will perform their duties according to the provisions of legislation and the Will, if any. The bond covers any financial losses to the estate due to dishonest or improper acts by the administrator.

### **Bond must be addressed**

#### **Form 74A Application**

Generally, a bond is required to be addressed in a Form 74A Application where the deceased died:

**a. without a Will;** or

**b. with a Will** and the estate trustee is:

- not named in the Will as the estate trustee ([Estates Act](#), s.35)

- not resident in Canada or in a country that is a [member of the Commonwealth](#) ([Estates Act](#) s. 6)

- not a trust company authorized to do business in Ontario and is not the Public Guardian and Trustee

Part 10 of Form 74A Bond explains that a bond is required to be addressed where:

- the deceased died without a Will or with a Will but did not name the applicant as an estate trustee in the Will.
- the applicant lives outside of Canada and/or outside the Commonwealth.

and explains that the Public Guardian and Trustee (PGT) and authorized trust companies are not required to post a bond and the circumstances in which an applicant who was the deceased's married spouse is not required to post a bond. See below for directions on how to process Part 10 of Form 74A.

#### **Form 74.1A Application**

Part 10 of Form 74.1A Bond explains that for a Small Estates Application a bond is required to be addressed where:

- the applicant lives outside of Canada and/or outside the Commonwealth.
- the estate beneficiaries include minors and/or mentally incapable adults and the deceased died without a will or with a will but did not name the applicant as an estate trustee in the will

and explains that the PGT and authorized trust companies are not required to post a bond and the circumstances in which an applicant who was the deceased's married spouse is not required to post a bond. See below for directions on how to process Part 10 of Form 74.1A.



## Form 74J Application

Part 8 of Form 74J (“Bond”), explains where a bond is required to be addressed in an Application for a:

- Certificate of Appointment of Foreign Estate Trustee’s Nominee as Estate Trustee without a Will (r.74.05.1(1)(d) and [Estates Act](#) s. 52(3)).
- Confirmation by Resealing of Appointment of Estate Trustee without a Will and no certificate of the court that issued the original grant is being filed indicating that sufficient security has been given to cover all of the assets, including those in Ontario (r.74.08(1)(b) and [Estates Act](#) s. 52(3)).
- Confirmation by Resealing of Appointment of Estate Trustee with a Will and the applicant is not a resident of Canada and/or the Commonwealth (r.74.08(1)(b) and [Estates Act](#) s. 6))
- Certificate of Ancillary Appointment of Estate Trustee with a Will and the applicant is not a resident of Canada and/or of the Commonwealth (r.74.09(1)(b) and [Estates Act](#) s. 6))
- Certificate of Appointment of Estate Trustee During Litigation and the bond requirement was not dispensed with by a court order (r.74.10(1)(b) and [Estates Act](#) s. 6 and 35).
- Certificate of Appointment of Succeeding Estate trustee without a Will and the bond requirement was not dispensed with by a court order (r.74.06(1)(e) and [Estates Act](#) s. 35).
- Certificate of Appointment of Succeeding Estate trustee with a Will, the bond requirement was not dispensed with by a court order and the applicant is not a resident of Canada and/or the Commonwealth (r.74.06(1)(e) and [Estates Act](#) s. 6).

### Bond is not required

A bond is not required where the applicant:

- obtained a court order dispensing with the requirement for a bond
- is the Public Guardian and Trustee or another government agency or ministry  
[s. 36(1), [Estates Act](#), s.16 [Public Guardian and Trustee Act](#), s. 4 [Crown Administration of Estates Act](#)];
- is a trust company authorized to do business in Ontario  
[s. 31.1 and s. 175(4) [Loan and Trust Corporations Act](#), s. 36(1) [Estates Act](#)]. (See list of [authorized trust companies](#))
- is applying with a Will and is a resident in Canada or a country that is a member of the Commonwealth, such that s. 6 of the [Estates Act](#) does not apply.
- is applying without a Will is the deceased’s married spouse where the spouse files an affidavit setting forth the debts of the estate and the net value of the estate does not exceed the spouse’s preferential share of the estate.

[s. 36(2) [Estates Act](#), s. 45 [Succession Law Reform Act](#)]. See section 6.2.4 “Requests to dispense with a bond.”

- is applying for a Small Estate Certificate without a Will or with a Will where they are not named in the Will as estate trustee and:
  - the estate is a small estate (\$150,000 value or less, [section 1](#) of [O.Reg.110/21](#) made under the [Estates Act](#)); and
  - no beneficiary of the estate is a minor or incapable within the meaning of section 6 of the *Substitute Decisions Act, 1992* in respect of any issue in the proceeding ([s.36\(3\)](#) of the [Estates Act](#)).
- is applying for a Confirmation by Resealing of Appointment of Estate Trustee with a Will and they are a resident of Canada and/or the Commonwealth (r.74.08(1)(b) and [Estates Act](#) s. 6))
- is applying for a Confirmation by Resealing of Appointment of Estate Trustee without a Will and a certificate of the court that issued the original grant was filed indicating that sufficient security has been given to cover all of the assets, including those in Ontario (r.74.08(1)(b) and [Estates Act](#) s. 52(3)).

### Applications for a Certificate of Appointment of Estate Trustee or Small Estate Certificate

To determine whether the applicant is required to post a bond, review:

1. Application (Form 74A or 74.1A), Part 10 - Bond section (reproduced below), Part 5 Entitlement to Apply and the Will, if any
2. [Table 9](#) (note, the table assumes that the applicant is not a trust company, the PGT, ministry or other government agency; a bond is not required for these applicants).

#### Form 74A

##### PART 10 – BOND

A bond is required to be addressed because *(check one if applicable)*:

- the deceased died without a Will or with a Will but did not name me as an estate trustee in the Will.
- I live outside of Canada and/or outside the Commonwealth.

#### Form 74.1A

##### PART 10 – BOND

A bond is required to be addressed because *(check one if applicable)*:

- I live outside of Canada and/or outside the Commonwealth.
- the estate beneficiaries include minors and/or mentally incapable adults and the deceased died without a Will or with a Will but did not name me as an estate trustee in the Will

If the applicant did not check off one of the boxes that a bond is required to be addressed and you determine that a bond is actually required to be addressed, send a Registrar's Notice.

The notice should explain that a bond is required to be addressed, explain the reason and direct the applicant to complete Part 10 of the Application.

If the applicant has indicated that a bond is required to be addressed (by checking off one of the boxes), determine whether the applicant has checked off one of the following five boxes in Part 10 of Form 74A or 74.1A:

*(If a bond is required to be addressed, check one of the boxes below.)*

- I will include a bond as part of the application that is submitted for filing with the court (Form 74L or 74M)
- None of the estate beneficiaries are minors or mentally incapable adults without a Guardian or Attorney with authority to act in this proceeding. I am seeking an order on consent to:
  - dispense with the bond requirement
  - reduce the amount of the bondand I will file with the court together with the application a draft order (Form 74I) together with a backsheet (Form 4C), an affidavit with respect to the bond requirement (Form 4D) and the consents of beneficiaries (Form 74H).
- I am relying on the exemption from posting a bond under section 36(2) of the *Estates Act* since
  - a) I was married to the deceased at the time of death; and
  - b) the net value of the estate does not exceed \$350,000; and  
*(if the deceased died before March 1, 2021, strike \$350,000 above and indicate \$200,000)*
  - c) I will file with the court together with the application an affidavit setting forth the debts of the estate.
- I am acting on behalf of a trust company or Public Guardian and Trustee and therefore do not need to post a bond.
- I will file a motion under Rule 37 to seek an order to reduce the amount of the bond or to dispense with the bond requirement since the request cannot be made on consent.
- A court order made by Justice (*insert name of judge*) dated (*insert date*) appoints the applicant(s) as estate trustee(s) and dispenses with the requirement for the applicant(s) to post a bond. A copy of the order will be filed together with this application.

If the applicant checked off the box that indicates that:

1. a bond is being filed, determine whether the bond was filed. If the bond was not in fact filed, send a Registrar's Notice to the Applicant (see Section 9).
2. a request on consent is being made to dispense with the bond or reduce the bond amount, review [Section 6.2.4](#) "Was a request to dispense with the bond requirement made on consent or a motion filed?"

3. they are relying on the exemption from posting a bond because they were married to the deceased at the time of death and they filed an affidavit setting forth the debts of the estate, determine whether the affidavit was filed and if it is satisfactory (see [Section 6.2.4](#)).
4. they are acting on behalf of a trust company or the Public Guardian and Trustee, confirm that the name of the applicant in the application reflects this fact and then proceed with processing the application.
5. a motion is being filed to seek an order to waive or reduce the bond, review [Section 6.2.4](#) “Was a request to dispense with the bond requirement made on consent or a motion filed?”
6. A court order is being filed appointing the applicant(s) as estate trustee(s) and dispenses with the requirement for the applicant(s) to post a bond, confirm the court order is filed and reflects this and then proceed with processing the Application.

If the applicant failed to indicate how they will address a bond requirement send a Registrar’s Notice or seek judicial direction as required.

Direct to a judge a Form 74A application where the applicant disputes the application of the bond requirements on the basis that the value of the estate is \$150,000 or lower. Prepare a memo to the judge:

- ask the judge to consider the issue of the bond requirements for the Form 74A application.
- indicate that:
  - o Rule 74 is relied upon and Form 74A was filed, which seeks a Certificate of Appointment of Estate Trustee rather than a Small Estate Certificate.
  - o the *Estates Act* s.7(4) and Rule 74.1 establish the procedure for a small estate application. Rule 74.1 authorizes the issuance of a Form 74.1C Small Estate Certificate *only*. The rule does not give a registrar the discretion to issue a Form 74C, a Certificate of Appointment of Estate Trustee, for a “small estate” application.
  - o A Form 74.1C Small Estate Certificate limits an estate trustee’s authority to the assets listed in the certificate which are stated to have a total value of \$150,000 or lower while a Form 74C Certificate of Appointment of Estate Trustee does

not limit the power of an estate trustee. That is, a Form 74C Certificate of Appointment of Estate Trustee allows an estate trustee to receive and administer all estate assets, which may be valued at more than the \$150,000 disclosed in the application since additional assets can be discovered after the issuance of a certificate. This is not the case for an estate trustee who is granted a Form 74.1C Small Estate Certificate; their authority is limited to the assets listed in the application which are valued at \$150,000 or less. An estate trustee acting pursuant to a Small Estates Certificate is required to return to the court to seek authority to manage subsequently discovered assets and, where the combined total of the newly discovered assets and other assets exceed \$150,000, must seek a Certificate of Appointment of Estate Trustee following the procedure under Rule 74 (RCP rule 74.1.05 and 74.1.06).

- ask the judge to consider whether to make an endorsement relating to the applicable procedure. For example, whether to direct the applicant:
  - to file a motion; or
  - to address the bond requirements for a Rule 74 application or to invite them to withdraw the application and start a fresh application following the Rule 74.1 procedure by filing a Form 74.1A (Small Estate Application) and draft Form 74.1C (Small Estate Certificate) if they are seeking to proceed without requesting dispensation of the bond requirements.

## Other Applications (Form 74J applications)

To determine whether a bond is required to be addressed in a Form 74J Application, review Part 8 – Bond (reproduced below).

### **PART 8– BOND**

A bond is required to be addressed because *(check all that apply)*:

- I am seeking a
  - Certificate of Appointment of Foreign Estate Trustee's Nominee as Estate Trustee without a Will
  - Confirmation by Resealing of Appointment of Estate Trustee without a Will and no certificate of the court that issued the original grant is being filed indicating that sufficient security has been given to cover all of the assets, including those in Ontario
  - Confirmation by Resealing of Appointment of Estate Trustee with a Will and I am not a resident of Canada and/or the Commonwealth
  - Certificate of Ancillary Appointment of Estate Trustee with a Will and I am not a resident of Canada and/or of the Commonwealth
  - Certificate of Appointment of Estate Trustee During Litigation and the bond requirement was not dispensed with by a court order
  - Certificate of Appointment of Succeeding Estate trustee without a Will and the bond requirement was not dispensed with by a court order
  - Certificate of Appointment of Succeeding Estate trustee with a Will, the bond requirement was not dispensed with by a court order and I am not a resident of Canada and/or the Commonwealth
- the deceased died without a Will or with a Will but did not name me as an estate trustee in the Will

If the applicant did not check off one of the boxes that a bond is required to be addressed and you determine that a bond is actually required to be addressed, send a Registrar's Notice to the Applicant (see Section 9). The notice should explain that a bond is required to be addressed, explain the reason and direct the applicant to complete Part 8 of the Application.

If the applicant has indicated that a bond is required to be addressed (by checking off one of the boxes), determine whether the applicant has checked off one of the following four boxes in Part 8 of Form 74J:

*(If a bond is required to be addressed, check one of the boxes below)*

- I will include a bond (Form 74L or 74M) as part of the application package that is submitted to the court for filing.
- None of the estate beneficiaries are minors or mentally incapable adults without a Guardian or Attorney with authority to act in this proceeding. I am seeking an order on consent to:
  - dispense with the bond requirement
  - reduce the amount of the bond

and I will file with the court together with the application a draft order (Form 74I) together with a backsheet (Form 4C), an affidavit with respect to the bond requirement (Form 4D) and the consents of beneficiaries (Form 74H).

- I am acting on behalf of a trust company or Public Guardian and Trustee and therefore do not need to post a bond.
- I will file a motion under Rule 37 to seek an order to reduce the amount of the bond or to dispense with the bond requirement since the request cannot be made on consent.
- A court order made by Justice (*insert name of judge*) dated (*insert date*) appoints the applicant(s) as estate trustee(s) and dispenses with the requirement for the applicant(s) to post a bond. A copy of the order will be filed together with this application.

If one of the above boxes is checked, follow the steps beginning on page 104 (under [Applications for a Certificate of Appointment or Small Estate Certificate](#)).

## Rule 74 Applications (Certificate of Appointment of Estate Trustee “CAET” Applications)

A bond is required for a Rule 74 Application when either:

- the applicant is not a resident in Ontario or in a province or territory of Canada or in a Commonwealth country
- the deceased died without a Will or the applicant is not named in the Will as estate trustee
  - the applicant is not the deceased’s spouse, or
  - the applicant is the deceased’s spouse but has not filed an affidavit asking the court to dispense with the bond, or

These bond rules are established by the [Estates Act](#) sections 6, 35 and 36(2) and are explained in the Ministry guide: [How to Apply for Probate in Ontario](#)

## Rule 74.1 Applications (Small Estate Certificate “SEC” Applications)

A bond is required for a small estate Application when either:

- the applicant is not a resident in Ontario or in a province or territory of Canada or in a Commonwealth country
- there are minors or incapable adult beneficiaries **and** the deceased died without a Will **or** the applicant is not named in the Will as estate trustee, **and**
  - the applicant is not the deceased’s spouse, or
  - the applicant is the deceased’s spouse but has not filed an affidavit asking the court to dispense with the bond or

These bond rules are established by the [Estates Act](#) sections 6, 35 and 36(2)(3)(4) and are explained in the Ministry guide: [Probate of a small estate](#)



**Table 9. Circumstances where a bond must be addressed**

Is there a Will?	Applicant resident in Canada or in a <a href="#">Common-wealth country</a>	Applicant named as estate trustee in Will	Applicant is deceased's married spouse	Net estate valued at over \$350k (for death on or after march 1, 2021) or valued at over \$200k (for death before March 1, 2021)	Beneficiary is minor or incapable adult	<b>Form 74A Application (Certificate of Appointment of Estate Trustee)</b>	<b>Form 74.1A Application (Small Estate Certificate) and total estate value is \$150k or less</b>
No			No		Yes	Bond required (or order dispensing with a bond)	Bond required (or order dispensing with a bond)
No			No		No	Bond required (or order dispensing with a bond)	No bond
No			Yes	Yes	Yes	Bond required (or order dispensing with a bond)	Bond required (or order dispensing with a bond)
No			Yes	Yes	No	Bond required (or order dispensing with a bond)	No bond
No			Yes	No	Yes	No bond if spouse filed affidavit setting out debts of estate	No bond if spouse filed affidavit setting out debts of estate
No			Yes	No	No	No bond if spouse filed affidavit setting out debts of estate	No bond
Yes		No			Yes	Bond required (or order dispensing with bond)	No bond
Yes		No	No		No	Bond required (or order dispensing with a bond)	No bond
Yes		No	Yes	No	Yes	No bond if spouse filed affidavit setting out debts of estate	No bond if spouse filed affidavit setting out debts of estate
Yes	Yes	Yes			Yes	No bond	No bond
Yes	Yes	Yes			No	No bond	No bond
Yes	No				Yes	Bond required (or order dispensing with bond)	Bond required (or order dispensing with bond)
Yes	No				No	Bond required (or order dispensing with bond)	Bond required (or order dispensing with bond)

## 6.2.2 Who can act as a surety for a bond?

The bond is a guarantee that an applicant will carry out their legal duties as an estate trustee. If they do not do so, their guarantor (called a surety) could be held responsible and required to pay the amount of the bond.

The bond must be given to a Judge of the Superior Court of Justice, with a surety or sureties as may be required by the Judge [[Estates Act](#), s.35].

The following companies or persons can be proposed to a Judge for consideration of their acting as a surety for the bond:

- an [insurer who is licensed in Ontario](#) to write surety and fidelity insurance in Ontario [[Form 74L](#)]
- for estates valued at over \$100,000, two personal sureties [[Form 74M](#), [R.74.11\(1\)](#), s.35 [Estates Act](#)]
- for estates valued at \$100,000 or less, one personal surety [[Form 74M](#), [R.74.11\(1\)](#), s.35 [Estates Act](#)]

A personal surety must be an adult Ontario resident, have sufficient assets to pay the amount of the bond and cannot be a lawyer or court registrar [[R.74.11\(1\)\(b\)\(c\)](#)].

A Judge must decide the amount of the bond and whether the proposed surety is acceptable. The amount of the bond must be double the amount of the value of the estate unless a Judge orders otherwise [s. 37(1), [Estates Act](#)].

A Judge can also decide whether to make an order that a bond is not required. See [Section 6.2.4](#) “Was a request to dispense with the bond requirement filed?”

The bond is to be made in favour of the Accountant of the Superior Court of Justice [[Estates Act](#), s.35 and [Public Guardian and Trustee Act](#), s.5].

Once the bond is filed, it is placed on the court file until the estate trustee seeks to cancel the bond on motion (See [Section 14.8](#) “Motion to Release a Bond”). There is no need to forward the bond to the Accountant’s office.

Personal surety bonds do not need a bond number.

Staff may commission the affidavit of a surety who attends before them. Payment of the prescribed fee for commissioning document will be charged. Collect the applicable fee amount or verify when a fee waiver certificate applies.

If a bond is filed, direct the Application to a Judge for determination.

### 6.2.3 What is the proper amount of a bond?

Unless a Judge orders otherwise, a bond must be in an amount of double the amount under which the property of the deceased has been sworn, and the Judge may direct that more than one bond be given so as to limit the liability of any surety to such amount as the Judge considers proper (*Estates Act*, s.37(1)). A Judge may at any time under special circumstances reduce the amount of or dispense with the bond [*Estates Act*, s.37(2)].

If a bond is filed, direct the Application to a Judge for determination.

### 6.2.4 Was a request to dispense with bond requirement or reduce bond amount made on consent or a motion filed?

#### 6.2.4.1 Request to dispense with bond requirement (by applicant who was not a married spouse)

An applicant for a certificate of appointment of estate trustee or confirmation of appointment may make a motion for an order,

(a) under subsection 37 (2) of the *Estates Act*, dispensing with the requirement to give the bond or reducing the amount of the bond required to be given; or

(b) under subsection 52 (3) of the *Estates Act*, permitting like security to be given covering the assets in Ontario as in the case of an application for a certificate of appointment of estate trustee [r. 74.11(3)].

A Judge may, under special circumstances, reduce or dispense with the amount of a bond.

#### **Request on consent**

An applicant for a certificate of appointment of estate trustee or confirmation of appointment may request an order to dispense with a bond or reduce the bond amount without making a motion if:

1. The request is made on consent of the persons who are entitled to share in the distribution of the estate.
2. None of the persons entitled to share in the distribution of the estate is,
  - i. a minor, or
  - ii. a person who is mentally incapable within the meaning of section 6 of the *Substitute Decisions Act, 1992* in respect of an issue in the proceeding, unless there is a guardian or attorney acting under a power of attorney with authority to act in the proceeding [r.74.11(5)].

If a request on consent is being made to dispense with the bond or reduce the bond amount, determine whether any of the beneficiaries named in the application are minors or mentally incapable adults without a guardian or attorney with authority to act in the proceeding.

If there are minors and mentally incapable adult beneficiaries, the applicant cannot make a request on consent to dispense with the bond or reduce the bond amount. The applicant **cannot** file a consent that is signed by a parent or guardian of a minor or a person that has signed on behalf of a mentally incapable beneficiary.

If there are minors or mentally incapable beneficiaries and the applicant is seeking to reduce the amount of the bond or waive the bond, the applicant should check the box in Part 10 - Bond of Form 74A and 74.1A:

I will file a motion under Rule 37 to seek an order to reduce the amount of the bond or to dispense with the bond requirement since the request cannot be made on consent

If the applicant did not check off this box or they have indicated that they are seeking, on consent, to reduce the bond amount or waive the bond, or they have filed a consent which is signed by a minor's parent or guardian or by a person on behalf of a mentally incapable beneficiary: Send a Registrar's Notice to the Applicant (see Section 9).

The Registrar's Notice should advise that:

- 1) a request on consent is not available since there are minors or mentally incapable beneficiaries, in accordance with Rule 74.11(5) and
- 2) the applicant can bring a motion to a Judge under Rule 37 to seek an order to reduce the amount of the bond or to dispense with the bond requirement pursuant to Rule 74.11(3) and the *Estates Act*.

If there are no minors and mentally incapable adult beneficiaries, determine whether the following required documents were filed in support of the consent request to reduce the bond amount or waive the bond:

1. Draft order (Form 74I) to waive or reduce the bond
2. Affidavit (Form 4D) in support of the request (containing information set out in r.74.11(6)3)
3. A consent to the order ([Form 74H](#) dated September 1, 2021 or [Form 74G](#) Part B dated November 1, 2023), from each beneficiary entitled to share in the distribution of the estate

If any of the required documents are missing, send a Registrar's Notice to the Applicant (see Section 9).

If the required documents are filed in support of the request, direct the Application to a Judge. A Judge may determine whether the Affidavit contains the required information [required by r.74.11(6)3] and whether to grant the order sought.

### **Rule 37 Motion**

Where it is not possible to obtain consent to a request to reduce the bond amount or waive the bond (for example, there is a minor or adult incapable beneficiary) a motion under Rule 37 is available to seek an order relating to the bond [r. 74.11(3)(4)].

A rule 37 motion under rule 74.11(3)(4) can be filed before, after or together with a probate application.

The box below which is contained in Part 10 - Bond of Form 74A and 74.1A may be checked:

I will file a motion under Rule 37 to seek an order to reduce the amount of the bond or to dispense with the bond requirement since the request cannot be made on consent

If the Rule 37 motion was:

*a. Filed together with a probate application:*

- Ensure that a notice of motion (Form 37A), affidavit and draft order (Form 74I) were filed
- Collect the motion fee
- Confirm proof of service indicates that the motion was served on the Office of the Children's Lawyer or Public Guardian and Trustee

- Assign a civil court file number with an -ES extension and enter the motion in FRANK
- Schedule the motion before a judge.

*b. Filed before a probate application is filed:*

- Determine if a court order was made and was filed together with the probate application.
- This can be indicated in the probate application by checking the box:

A court order made by Justice (insert name of judge) dated (insert date) appoints the applicant(s) as estate trustee(s) and dispenses with the requirement for the applicant(s) to post a bond. A copy of the order will be filed together with this application.

- If an order was filed and it directs that a certificate should be issued, proceed with the steps required prior to issuance of a certificate (estate court record search steps, [Section 7](#)).

*c. Not filed together with the probate application or filed before a probate application:*

- Prepare and send a Registrar's Notice to advise that a motion to a judge is required pursuant to rule 74.11(3)(4).

*d. Filed after the probate application was filed:*

- Take the steps set out in (a) to process the motion filing.

#### 6.2.4.2 Request by deceased's married spouse to dispense with bond requirement

Where the applicant was married to the deceased, a formal motion to dispense with a bond is not required. A common law spouse (person living in a conjugal relationship) is not considered a "surviving spouse" and therefore can't make this request to dispense with the bond [s.1 [Succession Law Reform Act](#)].

The deceased's married spouse can seek to dispense with the bond requirement by filing an affidavit that:

- declares that the net value of the estate is less than the spouse's preferential share

The net estate value is not more than \$200,000 if deceased died before March 1, 2021 or not more than \$350,000 if deceased died on or after March 1, 2021.

- identifies other persons who may be entitled to a share in the estate.  
[s. 36(2) [Estates Act](#), s. 45 [Succession Law Reform Act, O.Reg. 122/21 under SLRA](#)]

An applicant married spouse who is eligible to rely on this exemption, can indicate their intent to do so in Part 10 – Bond of Form 74A and 74.1A.

If the applicant is relying on this section, determine whether the required affidavit was filed and whether you are satisfied with the content of the affidavit.

If you are of the opinion that the Application raises an issue that requires judicial determination, direct the Application to a Judge [\[R.74.14\(4\). R.74.1.04\(4\)\]](#).

## 6.3 Service

An Application for a Certificate of Appointment of Estate Trustee (Form 74A and Form 74J) and Application for a Small Estate Certificate (Form 74.1A and 74.1E) is an originating process [[Rule 14.05\(1\)\(b\)](#)].

### 6.3.1 Who should be served with Form 74A, 74.1A or 74.1E?

An applicant must serve Form 74A or give or send Form 74.1A or 74.1E on/to every adult person entitled to share in the distribution of the estate, including charities and contingent beneficiaries [[Rule 74.04\(2\)](#) and [74.1.03\(3\)](#)]

If there is a Will, an applicant must serve Form 74A or send or give Form 74.1A:

- i. in the case of a person entitled only to a specified item of property or a stated or determinable amount of money, a copy of the Will and of any Codicils, or of the applicable portion of the Will or Codicils, or
- ii. in the case of any other beneficiary, a copy of the entire Will and of any Codicils.

The rules relating to service on minor beneficiaries, mentally incapable beneficiaries, unborn or unascertained persons and the Children's Lawyer and Public Guardian and Trustee are set out below.

#### **Minors** [[rules 74.04\(3\)](#) and [74.1.03\(4\)](#)]

If a person who is entitled to share in the distribution of the estate is less than 18 years of age, the Application should not be served on the person but instead must be served on a parent or guardian and on the Children's Lawyer. Only one parent or guardian of the minor must be served.

#### **Unborn or Unascertained Persons** [[rules 74.04\(4\)](#) and [74.1.03\(5\)](#)]

If there may be unborn or unascertained beneficiaries, the Application must also be served on the Children's Lawyer.

#### **Mentally Incapable Persons** [[rules 74.04\(5\)](#) and [74.1.03\(6\)](#)]

If a person who is entitled to share in the distribution of the estate is mentally incapable within the meaning of section 6 of the [Substitute Decisions Act, 1992](#) in respect of an issue in the proceeding, the Application must be served on the person and also served on,

- (a) a guardian, if there is a guardian with authority to act in the proceeding;
- (b) a person with a power of attorney, if there is no guardian with authority to act in the proceeding but there is an attorney under a power of attorney with authority to act in the proceeding;
- (c) the Public Guardian and Trustee, if there is neither a guardian nor an attorney with authority to act in the proceeding.

#### **Children's Lawyer, Public Guardian and Trustee** [[rules 74.04\(6\)](#) and [74.1.03\(6.1\)](#)]

If the Application is required to be served on the Children's Lawyer or the Public Guardian and Trustee and there is a Will, the applicant must serve, a copy of the entire Will and any Codicils, and a statement of the estimated value of the interest in the estate of the adult described in the



Application as lacking capacity or the minor, as the case may be, if that value is not disclosed in the Application.

**Method of Service** ([rules 74.04\(7\)](#) and [74.1.03\(7\)](#))

The Application must be served by,

- (a) personal service;
- (b) e-mail, to the last e-mail address for service provided by the person or, if no such e-mail address has been provided, to the person's last known e-mail address; or
- (c) mail or courier, to the person's last known address.

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Review the list of estate beneficiaries (in Form 74A and 74.1A, Part 7).

Review the Will, if any.

Review Form 74B (Affidavit of Service of Application for a Certificate of Appointment of Estate Trustee), Form 74B.1 (Lawyer's Certificate of Service of Application for a Certificate of Appointment of Estate Trustee), or Form 74.1B (Request to File an Application for a Small Estate Certificate or an Amended Small Estate Certificate).

### 6.3.2 Was each estate beneficiary served with the Application?

#### a. Applications with a Will

If there is a Will, determine whether each beneficiary named in the Will is listed in the Application (Form 74A or 74.1A).

Each beneficiary should be identified in Part 6 of the Application (and served with the Application) including each:

- beneficiary of a legacy (gift);
- beneficiary of the residue (balance of the estate after debts are paid); and
- contingent beneficiary (person who benefits if certain conditions are met, for example, another beneficiary dies or a beneficiary of a Henson trust).

If the applicant files a separation agreement that renounces a separated spouse's rights to the estate, it is possible that the spouse may not be listed on the Application as a beneficiary. Direct such an Application to a Judge for determination.**Form 74A Applications:**

Review Form 74B, Affidavit of Service of Application for Certificate of Appointment of Estate Trustee or Form 74B.1, Lawyer's Certificate of Service of Application for a Certificate of Appointment of Estate Trustee.

Determine whether Form 74B includes paragraph 3 (or paragraph 4 of 74B.1):

3. I served the above-noted Application on:

- i. each person entitled to share in the distribution of the estate, including charities and contingent beneficiaries;
- ii. the Office of the Children’s Lawyer if any of the persons with an interest in the estate are under the age of 18 and a parent or guardian of each of those persons;
- iii. the Office of the Children’s Lawyer if any of the persons who may be entitled to an interest in the estate are unborn or unascertained; and
- iv. the Guardian or Attorney for any adults who meet the definition of “incapable” as set out in Part 7 of the Application form. If I wrote “None” in the Guardian or Attorney box of Part 7 for any such person, I served on the Office of the Public Guardian and Trustee a copy of this Application form and a copy of the Will and any codicil(s) if there is a Will and any codicil(s).

If Form 74B/74B.1 is missing this statement, determine whether the applicant or their lawyer has provided a reason for failing to include it.

If a satisfactory reason was not provided, send a Registrar’s Notice (see Section 9 “Registrar’s Notice to Applicant”).

Review the Will and Form 74B/74.1B to determine whether a beneficiary identified in the Will (or a class of beneficiaries or their representatives such as the Office of the Children’s Lawyer and parent, for a minor, and Public Guardian and Trustee or guardian or person with power of attorney, for a mentally incapable adult) was not served with the Application.

If a beneficiary or their representative was not served, determine the next steps.

- a. Where the Office of the Children’s Lawyer and parent/guardian of a minor was not served or the Public Guardian and Trustee or a guardian of the person with a power of attorney, for a mentally incapable adult beneficiary, was not served: send the Application to a judge for determination. See Section 10 “[Judicial Determination](#)”.
- b. For other beneficiaries: Determine the reason that the beneficiary or class of beneficiaries was not served with the Application is indicated at paragraph 6 or 7 of Form 74B/74B.1.

6. The following persons and charities specifically named in the Will are not entitled to be served for the reasons shown below:

Name of person <i>(as it appears in Will, if any)</i>	Reason not served

A beneficiary named in the Will is not entitled to be served if:

- a. The beneficiary named in the Will is deceased (can't be served);
- b. The beneficiary received the gift before the death of the deceased; or
- c. The gift no longer exists.

In these cases, the beneficiary's name would not be indicated in the application.

#### Beneficiary is deceased

If the reason stated for not serving a beneficiary is that the beneficiary is deceased, determine whether the applicant explained that the beneficiary died before or after the deceased. If the beneficiary died:

- i. before the deceased, direct the application to a judge for an endorsement on service.
- ii. after the deceased, determine whether the beneficiary's estate trustee or another person should have been served.

See Section 6.3.5 and 6.3.6 for details on who should be served where a beneficiary is deceased and issues relating to service on an estate trustee.

If the application does not provide details about the beneficiary's death and/or you have concerns that a beneficiary or class of beneficiaries was not served, direct the Application to a Judge for an endorsement relating to service. See Section 10 "[Judicial Determination](#)".

If it is certain that the individual is not entitled to a share of the estate, the Judge may determine that the person does not need to be served with the probate application.

Example: The will names Jane as a beneficiary and if Jane is not living at the time of the testator's death, then John is the beneficiary of that interest in the estate. Jane was living at the time of the testator's death and therefore John is not entitled to the interest. In this case, Jane would be served but John would not be served. The applicant should explain why John was not served (that John does not have an interest in the estate).

If the individual may receive a share of the estate, the Judge may determine that the person should be served with the probate application in accordance with rule 74.04 (2) which provides that "The applicant shall serve the following documents on every person entitled to share in the distribution of the estate, including charities and contingent beneficiaries."

Example: The will leaves a farm to the testator's children, Justin and Joe. The brothers are to hold the farm in trust until the second one of the them dies. The beneficiaries of the trust are the children of Justin and Joe, and the trust terminates upon the death of the second of Justin and Joe. In other words, the ultimate beneficiaries, are only those children of Justin and Joe who are living at the time of the death of the last brother to die. In this case, the children of Justin and Joe would be served with the probate application for their grandfather's estate.

Where a Will refers to an inter vivos trust (established during a person's lifetime) or a testamentary trust (established on death under the terms of a will), direct the application to a judge to determine the issue of service of the probate application on the trust beneficiary, the trustees of the trust, the Office of the Children’s Lawyer (if the trust beneficiary is a minor), and if the trust beneficiary is a mentally incapable adult, the Public Guardian and Trustee/guardian with authority to act on behalf the person in the application/attorney under a power of attorney with authority to act in the application.

*(If not applicable, **delete** or **strike** paragraph 7. Complete this section if the Application has not been served on persons who are named in the Will or who are members of a class of beneficiaries under the Will or are entitled under an intestacy pursuant to the Succession Law Reform Act.)*

7. The following persons may be entitled to be served but have not been served for the reasons shown below:

Name of person <i>(as it appears in Will, if any)</i>	Reason not served

To the best of my knowledge and belief, subject to paragraph 7 (if applicable), the persons named in the Application are all the persons who are entitled to share in the distribution of the estate.

A beneficiary may be entitled to be served but not have been served with an Application due to circumstances such as the following:

- beneficiary cannot be located.

The attempts made to locate a beneficiary should be explained in a separate Affidavit if the person who tried to serve them was not the same person swearing/affirming the affidavit of service. Otherwise, the person can explain the efforts to serve the person who cannot be located in the affidavit of service (by adding lines or adding extra pages).

If a beneficiary or class of beneficiaries was not served because they could not be located, direct the Application package, including the Affidavit of Service and any other Affidavits, to a Judge for an endorsement relating to service. See Section 10 “[Judicial Determination](#)”.

If an applicant uses Section 7 to provide information that should have been provided in Section 6, or vice versa, do not send a Registrar’s Notice. For example, if the information that a beneficiary was not served was because they could not be located is stated in paragraph 6, do not send a Registrar’s Notice, but determine whether the required affidavit was provided.

If you have concerns that a beneficiary or class of beneficiaries was not served, direct the Application to a Judge for an endorsement relating to service. See Section 10 “[Judicial Determination](#)”.

**Form 74.1A and 74.1E Applications:**

Review Form 74.1B, Request to File an Application for a Small Estate Certificate or an Amended Small Estate Certificate

Follow the same steps as for Form 74A applications. However, the form sections are slightly different for Form 74.1B.

Determine whether the applicant checked off the box which says:

- I sent or gave the Application [Form 74.1A or 74.1E] to:
  - i. each adult person entitled to share in the distribution of the estate, including charities and contingent beneficiaries;
  - ii. the Office of the Children’s Lawyer if any of the persons with an interest in the estate are under the age of 18 and a parent or guardian of each of those persons;
  - iii. the Office of the Children’s Lawyer if any of the persons who may be entitled to an interest in the estate are unborn or unascertained; and
  - iv. the Guardian or Attorney for any adults who meet the definition of “incapable” as set out in Part 7 of the Application form. If I wrote “None” in the Guardian or Attorney box of Part 7 for any such person, I sent a copy of this Application form and a copy of the Will and any codicil(s) if any, to the Office of the Public Guardian and Trustee.

a. If the applicant did not check off this box, determine whether they have provided a reason for failing to do so (responded to the questions “If you did not check off all the boxes for the Applicant Declarations, provide the reason”). A reason for not checking off this box may be that the applicant is the sole beneficiary of the estate.

b. If a satisfactory reason was not provided, send a Registrar’s Notice.

Determine whether the applicant checked off these boxes:

I did not send or give the application to one or more person(s) named in the Will as beneficiaries or who are members of a class of beneficiaries under the Will or are entitled to share in the distribution of the estate under an intestacy pursuant to the *Succession Law Reform Act*. The reasons are as follows:

Name of person <i>(as it appears in Will, if any)</i>	Reason the application was not sent or given to the person

To the best of my knowledge and belief, the persons named in the Application are all the persons who are entitled to share in the distribution of the estate.

If the applicant indicates that a beneficiary or class of beneficiaries was not served, direct the Application to a Judge for determination of the issue of service.

For the reasons a beneficiary may be entitled to be served but not have been served with an Application, see above section on Form 74A Applications.

b. Applications without a Will

**Form 74A, 74.1A and 74.1E Applications:**

Review the list of estate beneficiaries in Part 6 of Form 74A and or Form 74.1A.

Review Form 74B, 74B.1 or 74.1B. Follow the steps set out in [section s.6.3.2\(a\) “Applications with a Will”](#).

Determine the response in Form 74B, 74B.1 or 74.1B to the question that asks whether the Application was served (for Form 74A) or given or sent (for Form 74.1A) to each person with an interest in the estate and the OCL and PGT, if applicable (see questions set out in the section “with a Will” above).

Determine whether the individuals identified in the beneficiaries in Part 6 of the Application without a Will are individuals who have an interest in the estate and therefore are entitled to be served with the Application. The *Succession Law Reform Act* sets out who is a beneficiary where the deceased died without a Will.

Follow the steps below to determine who should be listed as beneficiaries in the Application and therefore should be served with the Application. See also [Table 10](#) to learn who should be listed as beneficiaries and therefore should be served with the Application without a will.

i. *Service of the application on the deceased’s married spouse*

Determine:

- 1) whether a beneficiary identified in Part 6 is the deceased’s married (but not separated) spouse,
- 2) the net value of the estate and
- 3) the date of death.

If the net value of the estate is:

- less than \$350,000 for deaths on or after March 1, 2021, or
- less than \$200,000 for deaths before March 1, 2021

the deceased’s married spouse (but not separated spouse) is entitled to the entire estate (s.44 and 45 of *Succession Law Reform Act*). This is called the spouse’s “preferential share”. In this case the deceased’s married spouse would be the only person served (unless that spouse is the applicant, in which case service is not required on themselves).

- o A common law spouse does not have an interest in an estate where the deceased died without a will. As a result, the common law spouse should not be listed as a beneficiary in an application without a will. The fact that a common law spouse is not a beneficiary in an

Application without a Will is indicated in the Application form 74A and 74.1A in Part 7, Question C.1.

- If you have concerns that a married spouse was not served with the Application, direct the Application to a Judge for an endorsement relating to service. See Section 10 "[Judicial Determination](#)".

ii. *Service of the application on the deceased's children*

If the net value of the estate exceeds the amount of the spouse's preferential share, the deceased's children and married spouse (not separated) are entitled to a share in the estate (s. 46 of *Succession Law Reform Act*). In this case, the married/not separated spouse and the children should be listed as beneficiaries and served with the application.

- If a married spouse or children are not listed in Part 6 as beneficiaries, determine whether the applicant's answers to the Part 7 question are consistent (that the responses also indicate that the deceased did not leave behind a married/not separated spouse or children).
- If you have concerns that the children have an entitlement in the estate and they were not served, direct the Application to a Judge for an endorsement relating to service. See Section 10 "[Judicial Determination](#)".

Where the deceased had children born outside of marriage those children should also be listed as beneficiaries within Part 6 of the Application.

- Where those persons are not listed in Part 6, review Form 74B or 74.1B to determine whether the applicant has explained why those persons were not served.
- If no satisfactory explanation is provided, send a Registrar's Notice identifying the names of the individuals who were not served with the Application and should have been served.

Where the deceased did not leave behind a married (not separated) spouse, the deceased's children are entitled to a share in the estate.

Review the beneficiaries listed in Part 6 to determine if the deceased's children are the only individuals listed as beneficiaries. Also review the responses to Part 7 questions C.2.a., reproduced below.

2.	a. Did the deceased have any children?	<p><i>(Select "yes" if the deceased had a child inside or outside of marriage, adopted a child, was declared to be a child's parent by court order or had a child who was born after the deceased's death; see definition of "child" under s.1 of the Succession Law Reform Act and definition of "child" and "parent" in Part 1 of the Children's Law Reform Act).</i></p> <p>i. <i>If the answer to (a) is "yes", is the name and address of each surviving child of the deceased set out in Part 6 - Beneficiaries?</i></p> <p>ii. <i>If the answer to (a)(i) is "no", provide the names and addresses of the children who are not listed in Part 6 - Beneficiaries. If any of these children are minors,</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Yes <input type="checkbox"/> No
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	provide their dates of birth <i>(insert more rows if needed or attach a schedule)</i> :	
_____		
<i>If the answer to 2(a) is “yes”, answer questions 2(b) and 2(c).</i>		

iii. *Service of the Application on other relatives of the deceased*

If the deceased did not leave behind a married spouse/not separated spouse or children, determine if the beneficiaries are:

1. grandchildren and great-grandchildren; or
2. parents; or
3. brothers/sisters and children of predeceased siblings; or
4. nieces/nephews; or
5. next of kin of equal degree of consanguinity.

[Table 10](#) sets out who should be served with a probate application where a deceased died intestate.

Where the deceased did not leave behind a spouse or children, the estate is distributed equally among the issue of the deceased who are of the nearest degree in which there are issue surviving the deceased (s. 47 of *Succession Law Reform Act*). That is, the estate is distributed in the order listed above (to all of the grandchildren/great-grandchildren, if there are any, and if not, it goes to all of the parents etc.)

- If the beneficiaries listed in the application without a will do not appear to be the proper beneficiaries (for example, they are identified as a grandparent and a brother/sister), direct the application to a judge for determination (see [s.6.3.3 “Were individuals served when they should not have been served?”](#)).
- If the beneficiaries listed are both children and grandchildren, this may be due to the fact that a child died before or after the deceased. See [Section 6.3.5 Who should be served when a beneficiary dies?](#)

If you have concerns that other relatives have an entitlement in the estate and they were not served, direct the Application to a Judge for an endorsement relating to service. See Section 10 [“Judicial Determination”](#).

iv. *Service of the application where no beneficiaries are identified*

Where no beneficiaries are identified in the Application, direct the application to a Judge for a determination of whether the applicant should serve the application on the Public Guardian and Trustee or court staff should send the Application to the Public Guardian and Trustee.

The deceased’s estate becomes the property of the Crown and the *Escheats Act, 2015* applies if the deceased did not leave behind a married/not separated spouse, child, grandchild, parent, sibling, niece/nephew or any next of kin (*Succession Law Reform Act*, s.47(7)).



*v. Service of the application where there is a sole applicant and they are identified as the sole beneficiary*

Where the sole applicant is identified as the only beneficiary in the Application (with or without a will), it is not necessary to serve anyone with the application (an applicant would not serve themselves with the application).

Where the sole applicant is identified as the sole beneficiary and that applicant is not a relative (for example, was not the legal spouse at the time of death; that is, non-separated legal spouse of the deceased at the time of death), direct the application to a Judge. A Judge may determine whether to accept the evidence of the applicant's entitlement to act as estate trustee, the evidence that there are no other beneficiaries of the estate and may seek additional evidence as required. For example, a Judge may identify and consider potential issues relating to the execution of the Will, if any, potential issues relating to the deceased's testamentary capacity, undue influence, potential fraud, potential entitlement of other individuals and other issues.

**Table 10. Service on beneficiaries of application without a will**

<b>Survivor of the Deceased (died without a Will)</b>	<b>Who must be served with Probate Application because they are entitled to share in the estate</b>
Spouse (married spouse only, not a common-law partner) and no issue	Married Spouse, unless legally separated.
Spouse and issue where the <i>net estate is less than or equal to</i> spousal preferential share	Married Spouse, unless legally separated (only spouse is entitled to estate since it is less than or equal to preferential share)
Spouse and one child, or spouse and a predeceased child leaving issue, where <i>net estate is above</i> the preferential share	Married Spouse and Child (spouse entitled to preferential share amount <u>and</u> 1/2 of the remainder and 1/2 of remainder goes to the child) and any issue of a predeceased child (take their parent's share equally.)
Spouse and more than one child, or spouse and a predeceased child leaving issue, and net estate is above the preferential share	Married Spouse and Children (Spouse gets preferential share amount <u>and</u> 1/3 of the remainder. The remaining 2/3 go to the children equally) and any issue of a predeceased child (take their parent's share equally.)
Children and issue of deceased child	Children (entitled to equal shares) and issue of a predeceased child (take their parent's share equally).
Issue of deceased children	Grandchildren or great-grandchildren (entitled to equal shares).
No spouse and no issue	Parents of the intestate or the survivor of them
No spouse, issue, or parents	Surviving siblings (entitled to equal shares) and children of a predeceased sibling (take their parent's share equally, but only if there is at least one surviving sibling).
No spouse, issue, parents, or siblings	Nieces and nephews (entitled to equal shares).
No spouse, issue, parents, siblings, nieces or nephews	Next of kin of equal degree of consanguinity to the intestate in equal shares.
No known next of kin or heirs	Crown in right of Ontario [ <i>Escheats Act, 2015</i> ]

### 6.3.3 Were individuals served (identified as beneficiaries) when they should not have been?

In reviewing the application, you may find that individuals who are listed as beneficiaries and served with the application are not named in the Will as beneficiaries. This may be due to the following:

1. The person may be part of a “class of beneficiaries” in a Will.

Examples of classes of beneficiaries: children, grandchildren, issue etc. The beneficiary’s relationship to the deceased should be identified along with their name in Form 74A or 74.1A.

2. A beneficiary may have predeceased or is deceased at the time of filing of the application and another person has become entitled to their share. This would be identified in Form 74B or 74.1B. The Will may indicate the alternate beneficiary or beneficiaries for that person’s share gift, who could be their children, grandchildren or issue.

3. The person was not properly identified as a beneficiary.

For example, the person was listed as a common law spouse of the deceased and the deceased died without a Will. If you require more information about the reason the person was identified as a beneficiary, ask the filer to explain. If you have concerns about the response or believe that the individual should not have been identified as a beneficiary, direct the Application to a Judge for determination. The Judge can consider whether to make an order granting the applicant a Certificate of Appointment and declaring that an individual named in the Application as a beneficiary does not have an interest in the estate.

Where a Judge makes an order declaring that a person named in the Application as a person who is entitled to share in the distribution of the estate does not have an interest in the estate, you must note that fact, and the date on which the order was made, on the Certificate of Appointment [r.74.12(5)].

### 6.3.4 Was the Application with a Will made too early?

Review the Application.

Determine the answers to this question in Part 5: Entitlement to Apply in Forms 74A and 74.1A.

The Will includes a provision that makes the appointment of the estate trustee conditional upon the named estate trustee surviving the deceased for a specified period of time  Yes  No

If yes, the specified period of time is (*insert amount of time in days*) and it has ended. This time period ended on (*insert date*).

Check whether the answers are correct by comparing them against the content of the Will (the Will term would indicate that the estate trustee must survive the deceased by at least XX days)

If the answers are correct, determine the date of commissioning/signing of the Application.

Confirm that the date for commissioning/signing is later than the date indicated as the survival date (the date inserted in the statement “This time period ended on (date)”).

Beneficiaries should be served with an Application no earlier than the date specified in the Will as the survival date (for example, no earlier than 31 days after the testator’s death).

In addition, for **Form 74.1A Applications**:

Determine whether thirty days have elapsed between the date of the Application Form 74.1A and the date of Form 74.1B. If 30 days have not elapsed, send a Registrar’s Notice. See [Section 9, - Registrar’s Notice to Applicant](#). The 30 day wait does not apply if the applicants are the sole beneficiaries.

### 6.3.5. Who should be served with the application (Form 74A, 74.1A or 74E) when a beneficiary dies?

#### a. Applications with a Will

##### i. Beneficiary dies before the deceased

Where a beneficiary dies before the deceased, a determination must be made as to whether the failed gift (lapsed) passes to another person identified in the Will as a substitute beneficiary, falls into residue or passes on an intestacy. Unless the Will says otherwise, the gift would not fall into the beneficiary’s estate.

Direct the application to a judge for an endorsement on service. If there is no substitute beneficiary clause for the gifts to the deceased beneficiary point out in your memo the following sections of the *Succession Law Reform Act*:

- section 23 indicates that a failed devise or bequest is included in the residuary clause, if any, contained in the Will. This provision may suggest that a failed gift cannot fall into residue if there is no residuary clause or when the gift is a residuary one that fails in whole or in part.
- section 31 indicates that except where a contrary intention appears by the Will, where a devise or bequest is made to a child, grandchild, brother or sister of the testator who dies before the testator, either before or after the testator makes their will, and leaves a spouse or issue surviving the testator, the devise or bequest does not lapse, but takes effect as if it had been made directly to the persons among whom the shares in which the estate of that person would have been divisible (a) if that person had died immediately after the death of the testator; (b) if that person had died intestate; (c) if that person had died without debts; and (d) if section 45 (preferential share of spouse) had not been passed.

##### ii. Beneficiary dies after the deceased

You will need to review the Will to figure out who should be served with the Application when a beneficiary under a Will dies after the deceased. If you have concerns that the proper individuals were not served, you may direct the application to a judge for an endorsement on service.

*When the beneficiary dies shortly after the deceased (within the survival period in the Will)*

Most wills have a survival clause. This type of clause will say how many days a beneficiary needs to survive the testator (will-maker) in order to be entitled to their inheritance. A typical period of time is 30 days.

When a beneficiary dies within the survival period stated in the Will, the beneficiary will be deemed to have died before the deceased person. As a result, the beneficiary would not have an interest in the estate and it would not be necessary to serve the beneficiary or the beneficiary's estate.

*When the beneficiary lives beyond the survival period in the Will*

When the beneficiary dies after the deceased but lives beyond the survival period, you will need to review the Will to figure out who is entitled to the beneficiary's share of the estate (and therefore who should be served with the Application). For example, a Will may say that the beneficiary receives a gift only if they survive a certain other person. In such a case, the beneficiary's gift may lapse and other beneficiaries may be entitled to the gift.

Unless the Will says otherwise, the beneficiary's share of the estate would pass to the beneficiary's estate. That is, the gift to the beneficiary would become part of the beneficiary's estate. In turn, the beneficiary's estate would be distributed according to their Will or if they don't have a Will, it would be distributed under the rules of intestacy (pursuant to the *Succession Law Reform Act*, Part II Intestate Succession). See [Section 6.3.6](#) Was the estate trustee of the estate of a beneficiary served?

*When the Will does not have a survival clause*

Where the Will does not have a survival clause and a beneficiary dies after the deceased but before the estate is distributed the beneficiary's share of the estate will go to the beneficiary's own estate. See [Section 6.3.6](#) Was the estate trustee of the estate of a beneficiary served?

b. Applications without a Will

i. Married spouse dies before the deceased

Where a deceased's married spouse dies before the deceased and the Application is without a Will, the spouse's estate does not have an interest in the estate and should not be listed as a beneficiary. If they were listed as a beneficiary, see [Section 6.3.3](#) Were individuals served when they should not have been served?

ii. Child dies before the deceased

Where the deceased's child dies before the deceased and the Application is without a Will, the share of the deceased's child goes to that child's children (s.46(3) and 47(2) of the *Succession Law Reform Act*). In this case that child's children should be identified as beneficiaries and served with the Application.

iii. Beneficiary dies after the deceased

Where a beneficiary under the *Succession Law Reform Act Part II* dies after the deceased but before the estate is distributed, the beneficiary's share of the estate will go to the beneficiary's own estate. As a result, the beneficiary's estate trustee should be served with the application. See [Section 6.3.6](#)  
Was the estate trustee of the estate of a beneficiary served?

For an application without a Will, to determine whether any persons are entitled to a share in the estate due to the death of a child/ren of the deceased, review”:

- Part 6 Beneficiaries and
- Part 7, questions C.2.b. and c., reproduced below.

<p>2.b. Did the deceased have a child or children who died before the deceased?</p> <p>i. <i>If the answer to (b) is “yes”, provide the name(s) of the child or children who died before the deceased (insert more rows if needed or attach a schedule):</i></p> <hr/> <p>ii. <i>If the answer to (b) is “yes”, are the surviving children or grandchildren of each child who died before the deceased listed in Part 6 - Beneficiaries?</i></p> <p>iii. <i>If the answer to (b)(ii) is “no”, provide the names and addresses of the deceased child's surviving children or grandchildren (if any). If any of them are minors, provide their dates of birth (insert more rows if needed or attach a schedule)</i></p> <hr/>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A (none)</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>c. Did the deceased have a child or children who died after the deceased?</p> <p>i. <i>If the answer to (c) is “yes”, are the name(s) and addresses of the beneficiaries of the estate of each deceased child listed in Part 6 - Beneficiaries?</i></p> <p>ii. <i>If the answer to (c)(i) is “no”, provide the name(s) and addresses of the beneficiaries of the estate of each deceased child (insert more rows if needed or attach a schedule)</i></p> <hr/>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

### 6.3.6 Was the estate trustee of the estate of a beneficiary served?

- i. Estate trustee of estate of beneficiary was not served and should have been served

If beneficiary's estate is entitled to an interest in the estate but the estate trustee of the beneficiary's estate was not served (that is, the estate trustee for the beneficiary's estate is not listed in Part 6 of the Application), direct the Application to a Judge for an endorsement relating to service.

If you are uncertain of whether the beneficiary's estate is entitled to an interest in the deceased's estate, direct the Application to a Judge to determine the issue and an endorsement on service.

- ii. Estate trustee of estate of beneficiary was served and applicant seeks an order to dispense with a bond

Where the estate trustee of the estate of a beneficiary was served and the applicant is seeking to dispense with the requirement to post a bond, ensure that a consent the order is provided from each beneficiary of the estate of the deceased's beneficiary. These consents are required pursuant to Rule 74.11(6)2 (requires a consent to the order from each person who is entitled to share in the distribution of the estate).

iii. Estate trustee of estate of beneficiary was served and applicant is deceased's spouse who seeks to dispense with a bond

Where the estate trustee of the estate of a beneficiary was served and the applicant is the deceased's spouse who has filed an affidavit regarding debts, determine whether the applicant has identified each of the beneficiaries of the estate of the beneficiary. If the applicant has not provided this information in the affidavit, direct the Application to a Judge.

## 6.4 Proof of Death

### 6.4.1 Are there inconsistencies in the deceased's name, address, date of birth or date of death in the Application and either the Proof of Death document or the Will?

Review the Application (Form 74A or 74.1A) Part 1 “Information about the Deceased”) to determine the deceased’s name, any alternate names, address, date of death and date of birth.

Review the Proof of Death document and Will, if any, to determine the deceased's name, address, date of death and date of birth.

The information about the deceased contained in the Will and Proof of Death document should identify the same deceased who is identified in the Application.

If there are discrepancies between the deceased’s information that is contained in the Proof of Death document and the corresponding information in the Application, determine whether the discrepancy raises a reasonable doubt that the Proof of Death document does not identify the deceased.

#### **Example 1:**

Application:

*James Olsen, alternate name, Jimmy Olsen, born Jan. 1, 1970, died June 30, 2021, 95 Mystery Lane, North Bay, Ontario, P1A 0A5.*

No Will

Proof of Death:

*Jimmy Olsen, born Jan. 1, 1970, died June 30, 2021, 95 Mystery Lane, North Bay, Ontario, P1A 0A5.*

In this case, the Proof of Death document would be sufficient evidence of the death of the deceased identified in the Application.

#### **Example 2:**

Application:

*Giulia Guggio, born Oct. 1, 1974, died Sept. 30, 2021, 102 Gali Street, Guelph, Ontario, N1G 1X5*

Will:

*Giulia Guggio, born Oct. 1, 1974, died Sept. 30, 2021, 102 Gali Street, Guelph, Ontario, N1G 1X5*

Proof of Death:

*Guilia Anne Guggio, born Oct. 1, 1974, died Sept. 30, 2021, 102 Gali Street, Guelph, Ontario, N1G 1X5*

In this case, the Proof of Death document would be sufficient evidence of the death of the deceased identified in the Application.



**Example 3:**

Application:

*Zoe Zedde, born Aug. 1, 1976, died May 30, 2021, 1213 Rosa Road, North York, Ontario, M3K 1B2*

Will:

*Zoe Zedde, born Aug. 1, 1976, died May 30, 2021, 1213 Rosa Road, North York, Ontario, M3K 1B2*

Proof of Death:

*Zoe Zedde, born Nov. 10, 1976, died May 30, 2021, 905 Bart Road, North York, Ontario, M3K 1L6*

In this case, the Proof of Death document may not represent the same deceased identified in the Application. Send a Registrar's Notice.

## 6.5 Validity of the Will

To determine whether a Will is valid, the following issues must be considered:

### 1. Was the Will executed properly?

- Does the Will contain the testator's signature at the end of the Will, in wet ink, dated, and, if it is typed, include two witness signatures? Are there markings/edits on the Will?
- Is there evidence of the proper execution of the typed Will? (a satisfactory *Affidavit of Execution or Affidavit of Condition*)?
- Is the evidence filed for a holograph Will sufficient (is the affidavit satisfactory to the judge and an order directing issuance made?).

The civil court rules require evidence in the following form to prove that a Will was validly executed:

If there is a Will, the original of the Will and of any codicils, together with the following evidence of due execution of the Will and each Codicil,

(i) if the Will or Codicil is not in holograph form,

(A) an Affidavit of execution (Form 74D) of the Will or Codicil,

(B) if the Will or Codicil contains an alteration, erasure, obliteration or interlineation that has not been attested, an affidavit as to the condition of the Will or Codicil at the time of execution (Form 74E), or

(C) if each of the witnesses to the Will or Codicil has died or cannot be found, such other evidence of due execution as the court may require, or

(ii) if the Will or Codicil is in holograph form, an Affidavit Regarding the Holograph Will or Codicil (Form 74F) attesting:

that the handwriting and signature in the Will or Codicil are those of the deceased;

- whether the deponent of the affidavit has a potential interest that may conflict with the interests of estate beneficiaries; and

- any other information that may be relevant to the issue of the validity of a holograph Will.

- The September 2021 version of Form 74F can be filed until April 1, 2024 (O. Reg. 388/23)
- The November 2023 version of Form 74F can be filed starting on December 14, 2023.

See Rules [74.04\(1\)\(d\)](#) and [74.1.03\(1\)\(d\)](#).

### 2. Is there a later Will than the one filed with the application?

- Was another probate application filed? Is there a will on deposit with the court?
- Was a Notice of Objection filed that challenges the validity of the Will?

- Did a Judge make an order which validates the Will and directs the issuance of a certificate?  
Is an Application challenging the Will pending?

3. Did the deceased have the testamentary capacity to make the Will, were they unduly influenced to make the Will and did they have knowledge of the Will and approve of its contents?

- Was a Notice of Objection filed or Application to prove the will in solemn form filed?

- Did a Judge make an order which validates the Will and directs the issuance of a certificate?  
Is an Application challenging the Will pending?

To determine whether a Will is valid, review the Will, the Affidavit filed in support of the Application (Form 74D, 74E, 74F or another affidavit), [Table 11](#), and the content in this section. Consider whether the issue of the validity of the Will requires determination by a judge. For example, the Application should be decided by a judge where:

- a. there is an issue relating to the execution of a non-holograph Will (Affidavit of Execution or Affidavit of Condition is missing etc.)
- b. the Will is a holograph Will
- c. there is a Will on deposit with the Court or another application was filed with the court
- d. there is a dispute or issue regarding the Will (a Notice of Objection was filed or Notice of Application to Prove the Will in solemn form)

**Table 11. Valid Execution of Will**

Will	Yes	No
Original Will (paper format)	Proceed with processing the Application	Send Registrar’s Notice
Will is written all in handwriting	<p>Was an Affidavit attesting that the Will and signature are in the handwriting of the deceased (<a href="#">Form 74F</a>) filed?</p> <p>Follow the steps under <a href="#">section 6.5.2.6</a> “Holograph Will”.</p>	<p>Was Affidavit of Execution (<a href="#">Form 74D</a>) or Affidavit of Condition (<a href="#">Form 74E</a>) filed?</p> <p>If yes, follow the steps under <a href="#">section 6.2</a> “Was the Will executed properly?”</p> <p>If no, was another affidavit filed containing other evidence of due execution? Follow the steps under <a href="#">section 6.5.2.5</a> “Witnesses cannot be located or have died”.</p> <p>If no affidavits are filed (or the wrong affidavit is filed), send Registrar’s Notice (see <a href="#">Section 9</a> for steps).</p>
Name of the deceased in the Application matches the testator’s name on the Will	Proceed with processing	Send a Registrar’s Notice to Applicant (see Section 9)
Name of the deceased in the Application includes an “also known as” that matches the name on the proof of death document.	Proceed with processing	Send a Registrar’s Notice to Applicant (see Section 9)
Dated and hand signed by testator in ink	Proceed with processing	Send Registrar’s Notice
Signed by two witnesses by hand in ink	Proceed with processing	Send Registrar’s Notice unless the will was not typewritten (was a holograph will). If the will was not typewritten, follow steps under “holograph will”.
Contains alterations, erasures, interlineations or obliterations	Was an affidavit of Condition ( <a href="#">Form 74E</a> ) filed? Follow the steps under <a href="#">Section 6.5.2.7</a> : Alterations, erasures, interlineations or obliterations on the Will	Proceed with processing
Executed by virtual means (Zoom, Teams, FaceTime) and signed in counterpart?	Does Affidavit of Execution ( <a href="#">Form 74D</a> ) address the signing in counterpart? Follow the steps under <a href="#">Section 6.5.2.4</a> : Virtual witnessing of a Will	Proceed with processing

Important: Court staff should:

- not witness a Will for a court client
- not give clients advice regarding the process to execute a Will.

The issue of due execution of a Will is one of the most commonly litigated issues in estates litigation.

### 6.5.1 Is the Will in the proper format?

The Will filed with the court must be an original in paper form.

The filed original of the Will and Application must be maintained by the court, unless the [Rules of Civil Procedure](#) provide otherwise [[Estates Act, s.3](#)].

### 6.5.2 Was the Will executed properly?

A Will is not valid unless the legal requirements for execution of the Will are met.

With a few exceptions, a Will is not valid unless,

- (a) at its end, it is signed by the testator or by some other person in their presence and by their direction;
- (b) the testator makes or acknowledges the signature in the presence of two or more attesting witnesses present at the same time; and
- (c) two or more of the attesting witnesses sign the Will in the presence of the testator (can be witnessed remotely if certain conditions are met) [[Succession Law Reform Act, s.4](#)].

The exceptions to these requirements are as follows:

1. A testator may make a valid Will wholly by their own handwriting and signature, without formality, and without the presence, attestation or signature of a witness [[Succession Law Reform Act, s.6](#)]. If the Application contains a holograph will, direct the Application to a judge (See Section 6.5.2.6).
2. A person who is a member of the Canadian Forces or member of any other naval, land or air force while on active service or a sailor when at sea or in the course of a voyage may make a will by a writing signed by them or signed by some other person in their presence and by their direction without any further formality or any requirement of the presence of or attestation or signature by a witness. [[Succession Law Reform Act, s.5](#)].

As of January 1, 2022, applicants may ask for a court Order to declare that there was substantial compliance in making the Will. They may seek relief under the [Succession Law Reform Act, s.21.1\(1\)](#):

21.1(1) If the Superior Court of Justice is satisfied that a document or writing that was not properly executed or made under this Act sets out the testamentary intentions of a deceased or an intention of a deceased to revoke, alter or revive a Will of the Deceased, the Court may, on Application, order that the document or writing is as valid and fully effective as the Will of the deceased, or as the revocation, alteration or revival of the will of the deceased, as if it has been properly executed or made.

If the Application contains a request for such a court order, direct the Application to a Judge.

If the Application is to prove a lost or destroyed Will (only a copy of the Will is filed), see [Section 14.3](#), Application to prove a Testamentary Instrument.

#### 6.5.2.1 Testator's signature on a Will

A Will or Codicil must be signed by hand (can be signed in ink, pencil, crayon, magic marker). An electronic signature is not permitted on a Will or Codicil [[Electronic Commerce Act](#), s.31].

A Will is valid if the testator's signature (or signature made by the person signing for them) is placed at, after, following, under or beside or opposite to the end of the Will so that it is apparent on the face of the Will that the testator intended to give effect by the signature to the writing signed as their Will [[Succession Law Reform Act](#), s.7(1)].

A Will does not become invalid by the circumstance that,

- (a) the signature does not follow or is not immediately after the end of the Will;
- (b) a blank space intervenes between the concluding words of the Will and the signature;
- (c) the signature,
  - (i) is placed among the words of a testimonium clause or of a clause of attestation,
  - (ii) follows or is after or under a clause of attestation either with or without a blank space intervening, or
  - (iii) follows or is after, under or beside the name of a subscribing witness;
- (d) the signature is on a side, page or other portion of the paper or papers containing the will on which no clause, paragraph or disposing part of the Will is written above the signature; or
- (e) there appears to be sufficient space on or at the bottom of the preceding side, page or other portion of the same paper on which the Will is written to contain the signature [[Succession Law Reform Act](#), s. 7(2)].

A disposition or direction in the Will is not valid if it:

- a. is placed underneath the testator's signature or follows the testator's signature ; or
- b. was inserted after the signature was made ([Succession Law Reform Act, s.7\(3\)](#)).

If there is uncertainty regarding the validity of the deceased's signature on a Will, direct the Application to a Judge for determination. See [Section 10](#): "Judicial Determination".

#### 6.5.2.2 Date of Execution of Will

A Will should be dated.

If a Will is not dated or is dated imperfectly, the date of execution may be established by the evidence of an attesting witness or, where the evidence as to the date of execution cannot be obtained, evidence that the execution took place between two specific dates or that a search has been made and no Will that could be of a later date has been found [[rule 74.12\(4\)](#)].

Determine if the applicant has completed Part 2: Testamentary documents in the Application that says:

If the date for a Will or codicil is missing, explain here or in an attached schedule how the date was determined:

If the applicant has provided an explanation, attached a schedule to the Application to explain why the date for a Will or Codicil is missing or there is uncertainty regarding the date of execution of the Will, direct the Application to a Judge for determination.

#### 6.5.2.3 Witness subscriptions (signature or initials) on a Will

Two or more witnesses present at the same time must observe the testator making or acknowledging their signature on the Will. They may witness the Will signing remotely (see [Section 6.5.2.4](#) Virtual witnessing of a Will).

The two or more attesting witnesses must subscribe the Will in the presence of the testator [s. 4(2)(c) [Succession Law Reform Act](#)]. There is no specific form of attestation required. A witness' signature or initials on the Will suffices as attestation.

The *SLRA* does not specify where the witnesses to a will are to subscribe the will. As a result, it is not necessary that signatures of the witnesses be at the end of the Will. A witness' subscription may be placed on any part of a Will, provided it is made in the presence of the testator and with the intention of attesting to the testator's signature.

The witnesses must subscribe the Will by hand (can be signed in ink, pencil, crayon, magic marker). An electronic signature is not permitted on a Will or Codicil [[Electronic Commerce Act](#), s.31].

If you are uncertain about the form or placement of the witnesses subscriptions (signature and/or initials) on the Will, direct the Application to a Judge for determination.

One of the witnesses to the Will signing must swear/affirm an affidavit of execution ([Form 74D](#)) to demonstrate that the Will was executed properly. If the Will contains an alteration, erasure, obliteration or interlineation that has not been attested by the witnesses at the time the testator signed their will, an affidavit as to the condition of the Will at the time of execution ([Form 74E](#)) can be filed instead of an Affidavit of Execution. Subject to any concerns about the content of the affidavit, where an affidavit proving the execution of the Will was executed before January 1, 2022, it can be accepted for filing in the Form 74.8 Affidavit of Execution and Form 74.10 Affidavit of Condition. Where you have concerns that the filed affidavit does not provide the evidence required by legislation to establish due execution of the Will, direct the application to a judge for determination.

#### 6.5.2.4 Virtual witnessing of a Will

The witnesses to the testator's signature on the Will may witness the Will signing remotely (Teams, Zoom, FaceTime etc. where they can see and hear one another in real time) provided that at least one witness is a licensee within the meaning of the [Law Society Act](#) (a lawyer or paralegal) [[Succession Law Reform Act](#) s.4(1)(3)].

If a Will is executed remotely, the signatures and subscriptions required by the SLRA may be made by signing or subscribing complete, identical copies of the Will in counterpart, which shall together constitute the will [[Succession Law Reform Act](#), s.4(4)]. For a remotely executed Will, copies of the Will are considered identical even if there are minor, non-substantive differences in format or layout between the copies [[Succession Law Reform Act](#), s.4(5)].

A document is signed "in counterpart" where a copy of the document is produced for each party signing. The authority to sign a Will in counterparts allows for up to three copies of the Will, with each copy containing only one signature. The testator and the witnesses would each sign one of the copies of the Will rather than all three of them signing one Will. The three copies of the Will (or two copies of the Will if two of the individuals are in the physical presence of each other), when brought together, would form a complete executed Will. As such, only one exhibit stamp is required, the exhibit stamp can be affixed to the back of any one of the signature pages or on a separate sheet placed before the Will in counterparts attachment to the Affidavit.

If a Will was witnessed remotely, confirm that:

- 1) The Will was executed on or after April 7, 2020.
- 2) The Affidavit of Execution of Will or Codicil ([Form 74D](#)) or Affidavit of Condition ([Form 74E](#)) was sworn or affirmed on or after April 7, 2020.
- 3) The Will was signed by the testator and by the witnesses by hand (electronic signatures are NOT allowed).



- 4) The two witnesses signed the Will at the same time that the testator signed the Will (that is, the date of the witness signatures and date of the testator signature are the same). This took effect on May 20, 2021. If the signature dates on the Will are not the same direct the Application to a Judge.
- 5) One of the witnesses is a licensed Ontario lawyer or paralegal (Law Society member).
- 6) There are complete, identical copies of the Will signed or subscribed in counterpart on or after April 22, 2020 (the date this change took effect).

There should be at least two complete, identical copies of the Will signed or subscribed in counterpart (for example, where the testator is in one location and the two witnesses are physically present in another location). Three complete, identical copies of the Will are needed if all three individuals are signing from different locations if none of them are physically present at the time of signing. Two complete identical copies of the Will are needed if two of the three individuals were in the physical presence of each other at the time of the Will signing.

Where there are minor, non-substantive differences in format or layout between the copies of the Will, staff may accept the Will for filing.

If there is a doubt about the differences in format or layout between the copies of the Will, direct the Application to a Judge.

#### 6.5.2.5 Witnesses cannot be located or have died

If each of the witnesses to the Will or Codicil has died or cannot be found, an applicant can file other evidence of due execution “as the court may require.” In the case of a proceeding in the SCJ, “court” is defined as including an Associate Judge [\[R. 1.03\(1\)\]](#). A Judge has the discretion to determine the evidence required in support of the due execution of a Will where an applicant claims that witnesses to the Will cannot be found or have died.

If an Application or a filed affidavit indicates that the witnesses to the Will or Codicil cannot be found or have died, direct the Application to a Judge for determination.

See [Section 14.3](#), “Application to Prove a Testamentary Instrument”, for information on Applications where both witnesses cannot be found or have died.

#### 6.5.2.6 Holograph Will

A Will may be in holograph form, that is completely handwritten and signed by the testator.

A holograph Will is authorized by s. 6 of the [Succession Law Reform Act](#).

The question of whether a holograph paper is a valid holograph Will depends on the intention of the deceased when it was written (Rezaee (Re), 2020 ONSC 7584).

If the Will is in holograph form the applicant must file:

1) Affidavit Regarding a Holograph Will or Codicil [[Form 74F](#)] attesting:

- that the handwriting and signature in the Will or Codicil are those of the deceased;
- whether the deponent of the affidavit has a potential interest that may conflict with the interests of estate beneficiaries; and
- any other information that may be relevant to the issue of the validity of a holograph Will or Codicil.

- The September 2021 version of Form 74F can be filed until April 1, 2024 (O.Reg. 388/23)
- The November 2023 version of Form 74F can be filed starting on December 14, 2023.

2) The original Will must be marked as an exhibit to the affidavit [[R.74.04 \(1\)\(d\)](#)].

- There is no legislative provision or court rule directing the placement of an exhibit stamp for a Will. An exhibit stamp can be placed on the back of the Will (ideally on the back of the signing page, but it can be placed on the back of another page) or it can be placed on a separate sheet of paper that is attached before the Will (a sheet that is placed before the Will which is attached to the Affidavit Form 74D, 74E or 74F).
- An Application should not be rejected on the sole basis that the exhibit stamp is not on the back of the Will. If the Will is not marked as an exhibit to the Affidavit or it is marked as an exhibit but you have concerns that the Will is not a proper exhibit, send the application to a judge.

Direct the file to a Judge for determination.

The Judge will determine:

- if the holograph will is valid;
- whether the deponent of the affidavit has a potential interest that may conflict with the interests of estate beneficiaries; and
- whether or not the affidavit evidence is acceptable in the circumstances, and if not, what further or other proof of execution of the Will by the deceased should be filed.

A Judge may consider whether the deponent of the affidavit receives any gifts or entitlements under the Will.

If the Will is partly typed and partly handwritten, it must be signed by the testator at the end of the document and witnessed by two witnesses. An Affidavit of Execution of Will or Codicil [[Form 74D](#)] by one of the witnesses must be filed.

If there is an alteration, obliteration, interlineation or erasure in the Will, follow the steps in [Section 6.5.2.7](#).

If the Will is a copy only, a Notice of Application [[Form 14E](#)] must be filed to prove the copy in solemn form. See [Section 14.3](#) for further information and procedures.

A notarial copy of a Will from Quebec may be filed without having to prove the Will in solemn form. [[Estates Act](#), s.15].

#### 6.5.2.7 Alterations, erasures, interlineations or obliterations on the Will

A change to a Will includes an alteration, erasure, interlineation or obliteration.

Where a change was made before the Will was executed, the testator and the two witnesses must initial the change either in the margin, or close to where the changes were made.

Where a testator makes changes to a Will before it is executed, the testator and the two witnesses are required to initial the changes either in the margin, or close to where the changes were made.

Changes made to a Will after it has been executed require the signature of the testator and two witnesses (the witnesses do not have to be the same ones that witnessed the execution of the Will) either in the margin or close to where the changes were made. [[Succession Law Reform Act](#) ss. 18(1) and (2)]. The date the changes were made are also typically indicated.

Exceptions to these general rules are as follows:

- Where the testator is a member of the military on active service; and
- Where the Will is a holograph Will.

In these situations, only the testator must place their signature in the margin or close to where the changes were made. [[Succession Law Reform Act](#) ss. 5 and 6].

If the above formalities of execution are not complied with, the testator's changes will be void. If a provision of the Will is unclear because of the void changes, the part of the Will that has been changed will be of no effect.

Where there are alterations, erasures, interlineations or obliterations on a Will filed with an Application:

1. If changes are made to the Will that are not initialled or signed by the testator, witnessed and dated, an Affidavit of Condition ([Form 74E](#)) is required from one of the witnesses to the change.
2. If it is not clear whether the changes were made when the Will was executed or at a later date, one of the witnesses to the change must complete an Affidavit of Condition of Will or Codicil ([Form 74E](#)). The Will must be marked by the Commissioner as an exhibit to this Affidavit.
3. If Form 74D or 74E is required but has not been provided, send the applicant or their lawyer a Registrar's Notice.
4. Where the Application is complete, direct the Application to a Judge for determination.

An Affidavit of Condition of Will and Codicil [[Form 74E](#)] is not necessary where the changes

have been attested to on the Will by the testator and the two witnesses to the Will at the time

the Will was executed. These are part of the Will for purposes of the Application.

Where the Affidavit of Condition of Will or Codicil [[Form 74E](#)]:

1. attests that the alterations, etc. were made to the Will after it was executed but were properly executed by the testator and two witnesses and dated (or not), these are part of the Will for purposes of the Application.
2. lists alterations, etc. that are in the Will that have not been attested, a duplicate of the Will without the alterations, etc. must also be filed. The Will should be in the same condition as when it was executed and this document is used for purposes of the estate Application.
3. states the witness cannot recall the condition of the Will at the time of execution, direct the Application to a Judge.
4. states that the actual date of the change is unknown, but provides a date range (for example between January 1 and June 30, 2021), direct the Application to a Judge.

#### 6.5.2.8 Codicils

A Codicil is a separate document that refers to the Will. The Codicil must be executed in the same manner as a Will. [[Succession Law Reform Act](#) ss. 1 and 4]. See sections

named “Testator’s signature on a Will”, “Date of Execution of a Will”, “Witnesses signatures on a will”, “Virtual witnessing of a Will” and “Holograph Will”.

Any changes to a Will may be made in the Codicil including insertions and deletions. The Codicil must be changed in the same manner as a Will. Apply the same steps for Codicils as set out under “Alterations, erasures, interlineations or obliterations on the Will”.

#### 6.5.2.9 Testator is blind or cannot read or write

Where a testator is blind or cannot read or write, paragraph 7 of the Affidavit of Execution ([Form 74D](#)) should be completed. This paragraph states as follows:

*(Insert paragraph 6 if applicable (if the testator was blind or signed by making their mark).)*

6) Before the execution of the Will by the testator, the document was read to the testator, who *(insert “was blind” or “signed by making their mark”)*. The testator appeared to understand the contents of the Will.

### 6.5.3 Was the testator a minor?

In general, a testator must be 18 years of age before they have the capacity to make a Will, or 21 years of age if the Will was made before September 1, 1971 [[Succession Law Reform Act](#)], s.8(1)]. Exceptions to this age requirement are set out in the [Succession Law Reform Act](#), s.8(1)(a) to (d). A testator may be less than 18 years of age if:

- the testator married prior to the signing of the Will;
- the testator married following the signing of the Will and the Will declares it was made in contemplation of that marriage (in which case the Will becomes valid upon the marriage);
- the testator is a member of the regular force of the Canadian military or is on active service under the [National Defence Act](#) (Canada); or
- the testator is a sailor at sea or in the course of a voyage.

Review the Application (Form 74A or 74.1A) . Determine the answer to this question in Part 1: Information about the deceased:

The deceased was 18 years of age or older on the date the Will was executed  Yes  No

If no, please explain here or in an attached schedule why the deceased was authorized to make a Will (i.e., legislative provision):

If the answer is “Yes” (deceased was 18 years or older at the date of execution of the Will), process the Application.

If the answer is “No” (deceased was not 18 years or older on the date of execution of the Will), determine whether they have provided a schedule or details.

- a. If they have not provided a schedule or details, send the applicant a Registrar’s Notice.
- b. If they have provided a schedule or details, direct the Application to a Judge for determination. The Judge should be asked to determine the issue of the validity of the Will of a minor (s. 8 of the [Succession Law Reform Act](#)).

## 6.6 Validity of gifts under the Will

### 6.6.1 Is a gift to a beneficiary or their spouse who witnessed the Will void?

A testamentary gift to a person who witnessed the testator sign the Will, or to a person who signed for the testator, or to the spouse of the witness or person, is void unless a court orders otherwise ([Succession Law Reform Act](#), s.12).

The beneficiary may release their right to the gift; or, the other beneficiaries may consent to the gift standing. The beneficiary may also bring a motion for relief under s.12(3) of the [Succession Law Reform Act](#) and satisfy the court that the witness or spouse exercised no improper or undue influence. If the beneficiary witness does not do so, a person with a financial interest in the estate can move to require the witness to do so. Should the beneficiary witness fail to do so, they forfeit their right to the gift. [\[R.74.15\(1\)\(f\)\]](#). See [Section 14.7](#) “Orders for Assistance” and [Section 6.3](#) “Service” for additional information and procedures.

Review Form 74A or 74.1A. Determine the answer to Question 5 in Part 6 - Beneficiaries:

5. Did a beneficiary or married spouse of a beneficiary sign the Will or any codicil as a witness or sign for the testator?  Yes  No  N/A  
(no Will or codicil)

*If yes*, please explain here or in an attached schedule:

---

If the answer is “No” or “N/A (no Will or codicil)”, process the Application.

If the answer is “Yes”, determine if the applicant has provided an explanation in the Application or attached a schedule that says:

1. the beneficiary is giving up their right to the gift under the Will and has signed and filed a release.

Determine if a Release was filed (signed by the beneficiary witness and says that they have given up their right to a gift under the Will).

Direct the Application to a Judge for determination about whether the gift to the beneficiary is void by reason of s.12 of the *Succession Law Reform Act*.

- If the judge makes an order voiding the devise or bequest of a beneficial interest under a will or codicil, you must note that fact, and the date on which the order was made, on the Certificate of Appointment [r. 74.12(5)]. For example, indicate that

“Pursuant to order of Justice XX, dated XX, the gift under the Will to (name) void by reason of section 12 of the [Succession Law Reform Act](#)”;

*Sign, (print name under signature), Registrar, Superior Court of Justice  
(location).*

2. the other beneficiaries agree that the gift should stand.

Determine if the consents from the other beneficiaries have been filed.

Determine if the applicant has filed:

- a. Affidavit from the person who signed as witness is filed that confirms the other beneficiaries agree that the gift should not be given up has been filed.
- b. a draft Order approving the gift to the beneficiary. No filing fee is payable.

If the documents have been filed, direct the file to a Judge for determination of whether the gift to the beneficiary is void by reason of section 12 of the [Succession Law Reform Act](#).

- If the judge makes an order voiding the devise or bequest of a beneficial interest under a will or codicil, you must note that fact, and the date on which the order was made, on the Certificate of Appointment [r. 74.12(5)].

If the answer is “Yes” and the applicant has not provided an explanation or attached a schedule and a release indicating that the beneficiary has given up their rights under the Will:

1. Determine if the applicant filed a motion for an Order to Beneficiary Witness under [Rule 74.15\(1\)\(f\)](#). This motion seeks an order to require a beneficiary or spouse of a beneficiary who witnessed the will or codicil, or who signed the will or codicil for the testator, to satisfy the court that the beneficiary or spouse did not exercise improper or undue influence on the testator.

If yes, do not proceed with processing until a Judge makes a decision on the motion.

2. If the Order to Beneficiary Witness [[Form 74I](#)] has been made by a judge and a copy of the Order is filed with the Application, determine if the applicant filed an affidavit stating that:
  - a. The Order ([Form 74I](#)) was served on the beneficiary;
  - b. The beneficiary failed to bring a motion within the time prescribed by the court;
  - c. No extension of time for bringing a motion was granted by the court;
  - d. The applicant requests that the certificate of appointment of estate trustee with a Will be issued.



If the applicant files an affidavit with such attestations, proceed with the processing of the Application.

If the applicant does not file the required affidavit, send a Registrar's Notice.

### 6.6.2 Is a gift to a former spouse or separated spouse under the Will void?

Any gifts (devise or bequest of a beneficial interest) under a Will to a divorced spouse or to a separated spouse are void unless the Will expresses a contrary intention [[Succession Law Reform Act](#) s. 17(2)(3)]. The former spouse is deemed to have died before the testator died [[Succession Law Reform Act](#) s. 17(2)(3)].

The definition of a separated spouse is set out in is [Succession Law Reform Act](#) s. 43.1. A spouse is considered to be separated from the deceased person at the time of the person's death if,

(a) before the person's death,

(i) they lived separate and apart as a result of the breakdown of their marriage for a period of three years, if the period immediately preceded the death,

(ii) they entered into an agreement that is a valid separation agreement under Part IV of the [Family Law Act](#),

(iii) a court made an order with respect to their rights and obligations in the settlement of their affairs arising from the breakdown of their marriage, or

(iv) a family arbitration award was made under the [Arbitration Act, 1991](#) with respect to their rights and obligations in the settlement of their affairs arising from the breakdown of their marriage; and

(b) at the time of the person's death, they were living separate and apart as a result of the breakdown of their marriage.

Any of the events listed above must have occurred on or after January 1, 2022, except that in the case of (a)(i) the spouses must also have begun to live separate and apart on or after January 1, 2022.

**For Form 74A and 74.1A:** Review the answers to Part 7 - Information about the Deceased's Relationships, Question A.2.b.and 4.a.:

A. Complete if applying with a Will or without a Will

2.	a. Was the deceased married at the time of death?	<input type="checkbox"/>	
	b. <i>If the answer to (a) is "yes",</i> were the deceased and their spouse separated and at the time of death living separate and apart as a result of the breakdown of their marriage? <i>(Separation is defined in ss. 17 and 43.1 of the Succession Law Reform Act). Give details</i>	<input type="checkbox"/>	Yes
		<input type="checkbox"/>	No

	here or in an attached schedule:	<input type="checkbox"/>	
		<input type="checkbox"/>	Yes
	c. <i>If the answer to (a) is “yes”</i> , is the name of the married spouse set out in Part 6 - Beneficiaries?	<input type="checkbox"/>	No
	d. <i>If the answer to (c) is “no”</i> , provide the name and address of the married spouse	<input type="checkbox"/>	Yes
		<input type="checkbox"/>	No

4.	a. Were any of the deceased’s marriages terminated by divorce or a declaration of nullity?	<input type="checkbox"/>	
		<input type="checkbox"/>	Yes
	b. <i>If the answer to (a) is “yes”</i> , provide the name of the former spouse and the date of divorce or declaration of nullity. If there is a Will, indicate whether the date of divorce or declaration of nullity is after the date of the Will ( <i>insert more rows if needed or attach a schedule</i> )	<input type="checkbox"/>	No

If the answers are “Yes” (indicate that the deceased person was separated, divorced or marriage was annulled), determine whether the required details are provided in Question A.2.b. and/or A.4.b. or a schedule was attached. If the details/schedule was not provided, send the applicant a Registrar’s Notice.

Once the required information is provided, direct the Application to a Judge for determination.

Ask the Judge to consider whether to direct the registrar to note the terms of the order on the Certificate of Appointment of Estate Trustee on the Will and on the copy of the Will attached to the Certificate of Appointment or Small Estate Certificate pursuant to [R.74.12\(5\)](#):

For example:

“Gift under the Will to (name) void by reason of section 17(2) of the [Succession Law Reform Act](#)”

Sign, (print name under signature), Registrar, Superior Court of Justice (location).

## Section 7. Estates Court Records Search

Unless the court orders otherwise, a Certificate of Appointment of Estate Trustee, Small Estate Certificate or Amended Small Estate Certificate shall not be granted until the registrar has confirmed that,

- (a) no other Application (Form 74A, 74.1A, 74.1E or the earlier versions of these forms) has been filed in respect of the estate;  
[\[Estates Act, s.16\(a\), R.74.14\(1\)\(a\)\(i\), R. 74.1.04\(1\)\(a\)\(i\), R.74.1.05\(3\)\]](#).
- (b) no notice of objection (Form 75.1) was filed by a person who appears to have a financial interest in the estate and is in effect  
[\[Estates Act, s.16\(b\), R.74.14\(1\)\(a\)\(i\), R. 74.1.04\(1\)\(a\)\(i\), R.74.1.05\(3\)\]](#);
- (c) on an Application where there is a will, there is no will or codicil of a later date than that for which the grant is sought deposited in the Superior Court of Justice; and  
[\[Estates Act, s.16\(c\), R.74.14\(1\)\(a\)\(i\), R. 74.1.04\(1\)\(a\)\(i\), R.74.1.05\(3\)\]](#);
- (d) on an Application where there is no will, there is no will or codicil deposited in the Superior Court of Justice.  
[\[Estates Act, s.16\(c\), R.74.14\(1\)\(a\)\(i\), R. 74.1.04\(1\)\(a\)\(i\), R.74.1.05\(3\)\]](#);

If the registrar determines that an Application has been filed in two or more court offices, the proceeding shall be stayed until, on motion, a Judge of the Superior Court of Justice determines where the Application will proceed. [\[Estates Act s.17\]](#)

As of January 1, 2021, a Local Registrar can conduct the estate court record search that is required. This records search is also known as a “clearance search”.

## 7.1 Local Registrar searches of estate court records

### 7.1.1 What is a clearance search?

A “clearance search” is a search of the estate court records to determine whether there are any prohibitions against issuing a probate certificate.

The search of the court records is conducted to determine whether there is a record of:

- a) a Notice of Objection that has been filed
- b) another probate application (application for Certificate of Appointment of Estate Trustee or Small Estate Certificate) that has been filed
- c) a Will (or codicil) is on deposit with the court and it has a later date than the date of the Will that was filed or no Will has been filed.

### 7.1.2 When is a clearance search run?

A clearance search must be run before a probate certificate can be issued. If the search is “clear”, a certificate can be issued. If the search is “not clear”, you must not issue the certificate unless ordered otherwise by a judge.

Do **not** run a clearance search until you are ready and are able to issue the Certificate on the same day. The **clearance date and certificate date must be the same**. Do not back-date a Certificate.

### 7.1.3 Do you have the authority to run a clearance search?

You should not run a clearance search unless you are a “Local Registrar” at your court location. If you have not been assigned by your management to act as a Local Registrar, you must ask your Local Registrar to run the search.

### 7.1.4 What steps are involved in running a clearance search?

The steps involved depend on whether you are Local Registrar who has been asked to run a clearance search for another staff member or you’re a Local Registrar who is working on your own file.

If you are a Local Registrar conducting a clearance search, you must:

- 1) verify the data in the Estates System
- 2) run a clearance search


These steps are explained in detail below.

## 1) Verify data in Estates System

- Locate file in Estates System under **Documents > Application** on the menu bar
- Verify that all data on every tab is correct against the Application form, particularly the Application tab; make correction(s) as necessary.
  - Check that the correct Application type has been selected.  
If it is incorrect, contact Justice Technology Services (JTS) by submitting a ticket to the Service Desk to request a change; do not run clearance until this has been fixed.
- Record **undertaking and/or Section 4 Order**, if applicable, under the Asset Transaction tab
- Save the application (will bring you back to the Application List screen)

## 2) Run clearance search

- In the Application List screen, click on the blue icon under “**Workflow Action**” and this will take you to Application Detail screen

Edit/View	Fix Bad Record	SEG	Court	File Number	WIP?	Edit as WIP	Received date	First Name	Surname	Clearance Result	Workflow Status	Registrar's Notice	Workflow Action	Objection/Request Search	History
		Y	Toronto	2021-012734	N		08-JUN-2021			Not Clear	Application Created			Objection/Request Search	History

- At the top of the Application Detail screen, select “**Submit for Clearance**” button
- Select “**Apply Action**”

Local Registrar Documents Search Reports System  
You are here: Documents > Application > Detail

Application

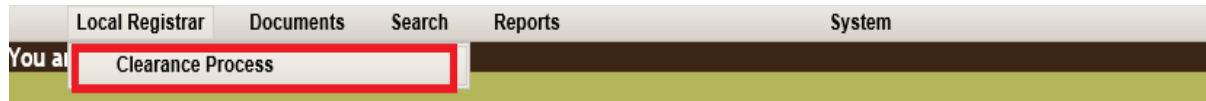
Workflow Actions

Actions: \*  Submit for Clearance Message:

Application \* Trustee Filer Asset Transaction Application Tracking Notes Application Small Estate Group

- This should return you to the “Application List” screen, with a message displayed stating: “*Action has been done successfully*”.
- Next, **copy the File Number** by pressing *Ctrl + C* on your keyboard (this will assist with later steps)

- From the menu bar, select “Local Registrar” and then select “Clearance Process”

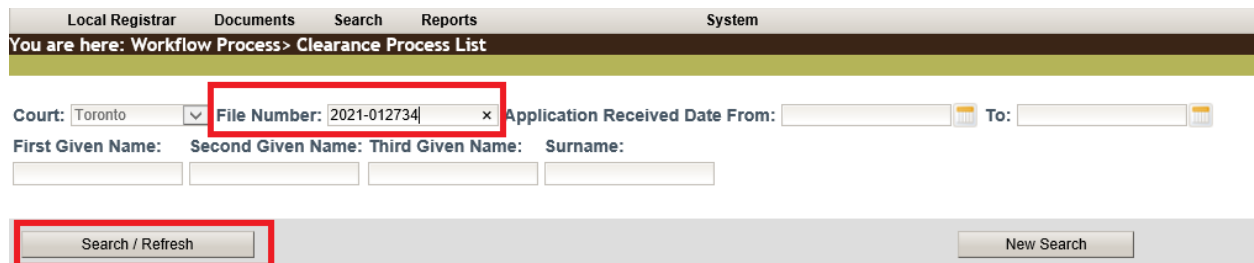


Action has been done successfully

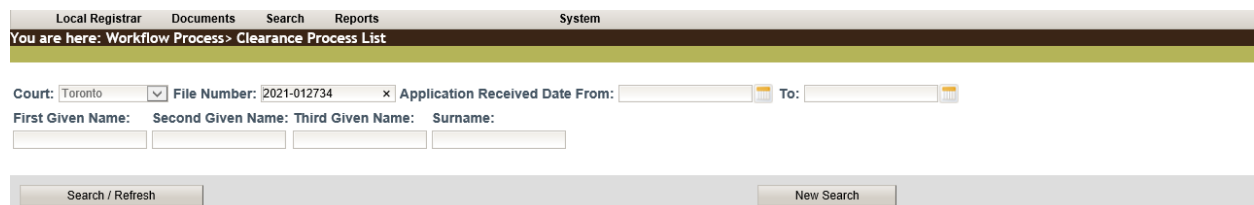
Court: Toronto File Number: 2021-012734 Received date from: to:

First Given Name: Second Given Name: Third Given Name: Surname: Clearance Result: Clearanc from:

- Type or paste (press *Ctrl + V* on your keyboard) the court file number.
- Select “Search/Refresh” button to bring up the file.



Clearance	Court	File Number	Workflow Status
-----------	-------	-------------	-----------------



Clearance	Court	File Number	Workflow Status	History
Clearance Process	Toronto	2021-012734	Application Submitted	History

Total found: 1 First Previous Next

- Click on “Clearance Process” button.
- In the Clearance Process screen, **verify** that the greyed-out information at the top matches the application you are working on (ensure you correctly entered file number earlier by checking whether the file is for the correct deceased)

Local Registrar Documents Search Reports System

You are here: Documents > Application > Clearance Process

Court: Toronto File No: 2021-012734 Recd. date: 8-JUN-2021

Application Type: 74.1C - SMALL ESTATE CERTIFICATE WITHOUT A WILL

Deceased: \_\_\_\_\_ Date of Death: 21-APR-2021

Back

Workflow Actions

Actions:  Run Clearance Process  Ask for Modifications or Not Cleared  Judges Endorsement Received

Message: \_\_\_\_\_

Apply Action

- Review the **Clearance Process Result** (“Final Result”)

a. If the Final Result says “NOT CLEAR/NON APPROUVÉ”:

Workflow Actions

Actions:  Run Clearance Process  Ask for Modifications or Not Cleared  Judges Endorsement Received

Message: \_\_\_\_\_

Apply Action

Final Result: **NOT CLEAR/NON APPROUVÉ**

Clearance Process Result

Document Type	View Document	File No	Court	DOB	Result
Will		94-000038	Kingston		NOT_CLEAR
Will		94-000758	Ottawa		NOT_CLEAR

Total found: 2 [First](#) [Previous](#) [Next](#) [Last](#)

- **STOP**. Refer to [Section 7.2 – Local Registrar’s processing results of estate court records search](#) for steps to take depending on what documents are found in Clearance Process Result
- Review the results indicated under the “Clearance Process Result” on the Estates System screen. That is, determine the document types contained in the estate court records (e.g. Will on deposit with the court, Notice of Objection has been filed, another probate application has been filed). Determine the Court File Number and Court Location for the document.
- Make a note for yourself of the file number and court location and the type of document that prevented clearance. (If you would like to do this through a screenshot, you can **Print to PDF** by pressing *Ctrl + P* on your keyboard, select “Microsoft Print to PDF” as the Printer, click “Print” button, and then select where to save the PDF. Do not provide the screenshot to the filer or attach it to the Registrar’s Notice. )
- Select **“Run Clearance Process”** and select **“Apply Action”**.
- Locate the file in Estates System under **“Documents”**, then select **“Application”**
- Generate a Registrar’s Notice by selecting the print symbol under **“Registrar’s Notice”**
  - Record the File Number and Court Location of the document(s) that prevented clearance in Section A of the Registrar’s Notice form

- You can use the Comment function of Adobe Reader to type it in
- Save a copy of the Registrar’s Notice to the electronic court file (if one does not exist because application was filed in paper, save a copy of the Registrar’s Notice on your computer for the purpose of printing and filing after it is sent by email to the applicant/lawyer)
- Return to Estates System, select the icon under “Edit/View” or select the hyperlinked “File Number” to open the Application screen.
- Enter the reason(s) for Not Clear in the “Notes” tab of the file (e.g., “DATE - Application on hold – wWill on deposit; notice sent”)
- Email a copy of the Registrar’s Notice to the applicant or lawyer
  - Use the email address indicated on the application form for the filer
  - If the filer is a lawyer and has not provided an email address, locate the email address from the Law Society of Ontario website [RCP Rule 4.12]
  - If the filer is not a lawyer and has not provided an email address, then you may send the Registrar’s Notice by mail
- File a copy of the Registrar’s Notice in the electronic file or physical court file
- Record in the Estates System, under the “Application Tracking” tab, the date that the Registrar’s Notice was sent to the applicant or lawyer under “File status date” and record that the file has been sent to “Client for Correction” under “File location”.

b. If the Final Result says “CLEAR/APPROUVÉ”:

- Select “**Run Clearance Process**” and select “**Apply Action**”.
- Proceed to **Step 3** to enter and issue the Certificate in the Estates System.

The screenshot shows the Estates System interface for the Clearance Process. At the top, there are navigation tabs: Local Registrar, Documents, Search, Reports, and System. Below this, a breadcrumb trail reads "You are here: Documents > Application > Clearance Process".

The main form area contains the following fields:

- Court: Toronto
- File No: 2021-012734
- Recd. date: 8-JUN-2021
- Application Type: 74.1C - SMALL ESTATE CERTIFICATE WITHOUT A WILL
- Deceased: [Redacted]
- Date of Death: 21-APR-2021

Below the form is a "Back" button. The "Workflow Actions" section shows two radio button options: "Run Clearance Process" (which is selected and highlighted with a red box) and "Ask for Modifications or Not Cleared". To the right of these options is a "Message:" field and an "Apply Action" button (also highlighted with a red box).

Below the workflow actions, the "Final Result" is displayed as "CLEAR/APPROUVÉ" (highlighted with a red box).

At the bottom, there is a "Clearance Process Result" table with columns: Document Type, View Document, File No, Court, DOB, and Result. The table shows "Total found: 0" and navigation buttons for "First", "Previous", "Next", and "Last".



c. If a Judge has made an endorsement directing the issuance of a Certificate:

Refer to [Section 10 – Judicial Determination](#) for more information regarding judicial determination.

Steps to be taken in the Estates System upon receipt of endorsement directing issuance:

- Locate the file under **Documents > Application** on the menu bar
- Verify that all data on every tab is correct against the Application form, particularly the Application tab; make correction(s) as necessary
  - In addition, check that the correct Application type has been selected.  
If it is incorrect, contact JTS by submitting a ticket to the Service Desk to request a change; do not run clearance until this has been fixed.
- Record **undertaking and/or Section 4 Order**, if applicable, under Asset Transaction tab
- Save the application (will bring you back to the Application List screen)
- In the Application List screen, select the blue **“Workflow”** button, and select **“Re-Submit for Clearance”**.
- Select **“Apply Action”**. This should return you to the “Application List” screen, with a message displayed stating: *“Action has been done successfully”*.
- Next, **copy the File Number** by pressing *Ctrl + C* on your keyboard (this will assist with later steps)
- From the menu bar, select **“Local Registrar”** and then select **“Clearance Process”**
- Type or paste (press *Ctrl + V* on your keyboard) the court file number.
- Select **“Search/Refresh”** button to bring up the file.
- Click on **“Clearance Process”** button.

Clearance	Court	File Number	Workflow Status	History
Clearance Process	Toronto	2021-012734	Application Submitted	History

- Select **“Judges Endorsement Received”** and enter a brief description of the endorsement/order received in the Message field, e.g., “Certificate to be issued pursuant to the endorsement (or order) of Justice (NAME) dated (DATE).”
- Select **“Apply Action”**

Court:  File No: 2021-000457 Recd date: 14-MAY-2021

Application Type: Application for Certificate of Appointment of Estate Trustee with a will

Deceased:  Date of Death: 23-APR-2021

**Workflow Actions**

Run Clearance Process  
 Ask for Modifications or Not Cleared  
 **Judges Endorsement Received**

Message:

- Locate the file in the Estates System under **Documents > Application** on the menu bar. Type or paste the file number to search for the file.

- Workflow Status should read “Judge’s Endorsement”

Court:  File Number: 2021-000457 Received date from:  to:  Files to include? All Files

First Name:  Second Name:  Third Name:  Surname:  Clearance Result:  Clearance search completed from:  to:

Application Type:  Workflow Status:

Active File: All Small Estate Group (SEG):

Applications List	Edit/View	Fix Bad Record	SEG	Court	File Number	WIP?	Edit as WIP	Received date	First Name	Surname	Clearance Result	Workflow Status	Registrar's Notice	Workflow Action	Pre-Clearance Search	History	Delete
					Barrie 2021-000457 N			14-MAY-2021	<input type="text"/>		Not Clear	Judges Endorsement			<input type="button" value="Pre-Clearance Search"/>	<input type="button" value="History"/>	<input type="button" value="Delete"/>

Total found: 1

- You may proceed to enter and issue the Certificate in the Estates System. See section 8 “Issuance of Certificate” and [Section 8.2.2.1](#) How do I record the Certificate and Issuance in the Estates System?

## 7.2 Local Registrar's processing results of estate court records search

- 1) Once the estate court records search (clearance process) is conducted by Local Registrar, the results will be searchable within the Applications screen.
- 2) From the Workflow Status drop down menu, select Clearance Process Run.

You are here: Documents> Application List

Court:  File Number:  Received date from:  to:  Files to include?

First Given Name:  Second Given Name:  Third Given Name:  Surname:  Clearance Result:  Clearance search completed from:  to:

Application Type:  Active File:

**Applications List**

Edit/View	Fix Bad Record	SEG Court File Number	WIP?	Edit as WIP	Received date	First Name	Surname	Clearance Result	Workflow Status	Registrar's Notice	W...
-----------	----------------	-----------------------	------	-------------	---------------	------------	---------	------------------	-----------------	--------------------	------

Workflow Status:

- Initial
- Application Created
- Application Submitted
- Clearance Process Run**
- Application Closed
- Modifications Required or Not Cleared
- Certificate Issued
- Application Opened
- Application Re-Submitted
- Judges Endorsement

- 3) Specify the date range for the search by completing the date fields for the Clearance Date located beside the drop-down menu.

You are here: Documents> Application List

Court:  File Number:  Received date from:  to:  Files to include?

First Given Name:  Second Given Name:  Third Given Name:  Surname:  Clearance Result:  Clearance search completed from:  to:

Application Type:  Active File:

Workflow Status:

- 4) Run the search and review the status of the Applications under the Clearance Status heading.
- 5) If the status comes back "Clear", proceed to issue the Certificate of Appointment (for the steps, see [Section 8](#) Issuing Certificate of Appointment).
- 6) If the status comes back 'Not Clear' do not issue a Certificate of Appointment. In this circumstance, you must:
  - i. Generate, complete and send by email a Registrar's Notice to Applicant [[Form 74O](#) or [Form 74.1D](#)]. For the steps, see [Section 9](#) "Registrar's Notice".
  - ii. Take the additional steps required in the circumstances, as described below.

## 7.2.1 Does estate court record search reveal that another Application was filed?

If yes,

- i. Generate, complete and send by email a Registrar's Notice to Applicant [[Form 74O](#) or [Form 74.1D](#)]. See [Section 9](#) Registrar's Notice for the steps to complete.
- ii. Record in the Notes screen of the Application in the system "Application on Hold – Application already filed".
- iii. Direct the Application to a Judge. Advise the Judge that a decision is required pursuant to [Estates Act](#) s.16 or s.17 since another Application has been filed for the same estate.

Where an Application for a Certificate has been filed in two or more court offices, the proceeding will remain stayed until, on motion, a Judge determines where the Application will proceed. [[Estates Act](#) s. 17]

## 7.2.2 Does estate court record search reveal that a later Will is on deposit with the court?

You may receive an alert from the Estates System that a later Will is on deposit with the court when you:

- a. record a new Application for a Certificate of Appointment ([Form 74A](#), [74.1A](#) or [74.1E](#)) in the Estates System; and/or
- b. run an Estates Court Records Search (clearance search) (see [Section 7 "Estates Court Record Search"](#)).

In each of these circumstances if the estate court record search reveals that a later Will is on deposit with the Court:

1. Consider the date of the Will that is on deposit with the Court and the date of the deceased's birth and date of death. If it is clear that the Will that is on deposit could not have been made by the testator, direct the file to a Judge with a request for directions regarding the Will on deposit and whether to issue the Certificate of Appointment. See Section 10, "Judicial Determination".

Example: The Will on deposit with the Court is dated March 1, 1960. The deceased in the Application at issue was born on July 3, 1972 (as sworn/affirmed by the applicant in the Application). The deceased could not have prepared a Will 12 years before they were born. Direct the Application to a Judge for directions. See Section 10, "Judicial Determination".

2. If the date of the Will on deposit might have been made by the deceased in the Application at issue, take the following steps:
  - i. Generate and send by mail to each estate trustee named in the Will on deposit (including alternate estate trustees) a [Form 74N](#) and attach a copy of the Application (rule 74.12(1)).

- Where the contact information for the estate trustees named in the Will is incomplete or not available: 1) note this fact in the Estates System and note that this is the reason that the Form 74N was not sent to the estate trustees named in the Will on deposit and 2) when forwarding the Application to a Judge (see step iv.), advise the Judge that the 74N could not be sent and provide the reasons.
- It is not necessary to wait for a response from the estate trustees named in the Will on deposit before sending the application to a judge. A response is not required.
- Where it appears that the Will on deposit could not have been made by the Testator (see example in paragraph 1), it is not necessary to send a Form 74N to the estate trustee/s named in the Will on deposit.

- ii. Generate, complete and send by email a Registrar’s Notice to Applicant [[Form 74O](#) or [Form 74.1D](#)]. See [Section 9](#) “Registrar’s Notice to Applicant” for more information on the steps to complete.

Along with the Registrar’s Notice, provide the applicant/lawyer with a photocopy of the front of the envelope (Administrative [Form RR-0111](#)) containing the Will on deposit with the court (a photocopy of the front of the envelope may need to be obtained by email from the Court location that has the Will on deposit). Indicate on the correspondence brad the date the copy was sent or provided and initial.

Do NOT provide a copy of the Will (the envelope must remain sealed).

Notify the applicant or lawyer in the Registrar’s Notice that an affidavit should be filed to respond to the issue (for example, to indicate that the Will on deposit with the court does not appear to be the Will of the deceased and the reasons for this conclusion).

- iii. Record in the Notes screen of the Application in the system “Application on Hold – Later Will on deposit”.

- iv. On receipt of the required affidavit, direct the Application to a Judge.

Explain to the Judge that a decision is required pursuant to [Estates Act](#) s.16 since a later Will is on deposit with the court (or a will is on deposit and the Application is without a Will).

If the applicant provided an affidavit to address the issue of the Will on deposit with the court, provide the affidavit to the Judge.

### 7.2.3 Does estate court record search reveal that a Will is on deposit and the Application is without a Will?

If yes, follow the steps in [Section 7.2.2, “Does estate court record search reveal that a later Will is on deposit with the court?”](#). Where Section 7.2.2 refers to “a later Will on deposit with the Court”, interpret that as “a Will” is on deposit with the court.

### 7.2.4 Does estate court record search reveal that a Notice of Objection was filed?

If yes, follow the steps set out in [Section 14.1](#): “Notice of Objection”.

## Section 8. Certificate Issuance

### 8.1 Readiness for Issuance

A registrar may issue a Certificate of Appointment of Estate Trustee ([Form 74C](#)), Small Estate Certificate ([Form 74.1C](#)) or Amended Small Estate Certificate ([Form 74.1F](#)),

- (a) if the registrar is satisfied that,
  - (i) issuance is not prevented under section 16 of the [Estates Act](#),
  - (ii) the Application for the Certificate contains the information, evidence and supporting documentation required by the court rules or under any Act, and
  - (iii) the applicant has met the requirements of subrule [74.13 \(1\)](#) or (2), or has obtained an order under subsection 4 (1) of the [Estate Administration Tax Act, 1998](#); or
- (b) if directed to do so by a Judge.

For the authority for issuance of a Certificate by registrar see rules [74.14\(1\)](#), [74.1.04\(1\)](#) and [74.1.05\(1\)](#).

If after taking into consideration the rules above you are satisfied that a certificate can be issued, proceed with the issuance steps.

To ensure that:

- i. issuance is not prevented under section 16 of the [Estates Act](#), follow the steps in [Section 7](#) “Estates Court Records Search”. The issuance steps must be completed on the same day the estate court records search reveals a “clear” result.
- ii. the Application contains the information, evidence and supporting documentation required by the court rules and under any Act, follow the steps in [Section 6](#): “Application Review”.
- iii. the applicant has met the requirements of subrule [74.13 \(1\)](#) or (2), or has obtained an order under subsection 4 (1) of the [Estate Administration Tax Act, 1998](#), follow the steps in [Section 4](#) “Estate Administration Tax”.

To determine each of these issues you may request that the applicant provide you with any required information or file any required evidence or documentation [[rules 74.14\(2\)](#), [74.1.04\(2\)](#) and [74.1.05\(3\)](#)].

If you are not satisfied that all of the Application requirements have been met, you must refuse to issue the Certificate, unless the Application should be referred to a Judge for determination (rules [74.14\(3\)](#), [74.1.04\(3\)](#) and [74.1.05\(3\)](#)).

You must refer an Application for a Certificate of Appointment to a Judge for determination if, in your opinion, the Application raises an issue that requires determination by a Judge [[rules 74.14\(4\)](#), [74.1.04\(4\)](#) and [74.1.05\(3\)](#)]. See [Section 10](#) “Judicial determination”.

If you refuse to issue the Certificate, you must send a Registrar's Notice (in [Form 74O](#) or [74.1D](#)) to the applicant or the applicant's lawyer by,

- (b) e-mail to the e-mail address most recently indicated for the applicant or the applicant's lawyer in the applicable court file, if any, or, in the case of a lawyer whose e-mail address is not indicated in the court file, the e-mail address for the lawyer as published on the Law Society of Ontario's website; or
- (a) regular lettermail to the filer's mailing address contained in the Application [[rules 74.14\(5\), 74.1.04\(5\)](#) and [74.1.05\(3\)](#)].

See [Section 9](#) "Registrar's Notice to Applicant" for the detailed steps.



## 8.2 Issuance

### 8.2.1 How can a Certificate be issued?

A Certificate of Appointment (Form 74C, 74.1C or 74.1F) can be issued manually or electronically.

### 8.2.2 How is every Certificate issued?

Once all of the Application requirements are met and you are satisfied that the evidence and information submitted is satisfactory and there are no legislative bars to issuance, proceed to issue the Certificate (Form 74C, 74.1C or 74.1F).

- 1) Proceed with issuance on the same day a “clear” estate court records search (“clearance search”) result is obtained. See [Section 7](#) – Estate Court Records Search.
- 2) Review the draft Certificate that was filed. Ensure that it contains the required information including the name of the deceased, date of death, whether a Will or Codicil was filed and the date, if any, the deceased’s address, the contact information for the applicant.

A deceased person’s title (Doctor, Father, Brother, Sister, Pastor etc.) should not be included in the Certificate of Appointment of Estate Trustee (even if it is included in the Will or Proof of Death document).

A backsheet is required for the draft Certificate and it is now automatically attached to the Certificate forms (Form 74C, 74.1C, 74.1F) on the CSD forms website.

- 3) You may amend a draft Certificate of Appointment if required. However, if the change is substantive you should email the lawyer or applicant to confirm that they would not have a concern about the change.

You should not reject a draft Certificate because the applicant has failed to delete rows of information that are not applicable. In this case you can revise the draft Certificate by striking or deleting the rows or preparing a Certificate in the proper form. See [Section 8.5](#)

- 4) If the Application is with a Will, and the draft Certificate does not have a copy of the Will or Codicil attached, attach a copy of the Will/Codicil to the issued Certificate.
- 5) If the Will was executed remotely and is signed or subscribed in counterpart, and the draft Certificate does not indicate text, “The Will was executed remotely and signed in counterpart pursuant to *Succession Law Reform Act*”, insert this text and follow the steps in [Section 8.3.2](#).

6) Considerations:

*A) Court order directs issuance*

If the Certificate is being issued pursuant to a court order, the following text should be inserted on the Certificate in accordance with the direction contained in the Certificate form “This Certificate was issued pursuant to the order of Justice (insert name of Judge) dated (insert date of order)”.

- If the applicant has not inserted this text in the draft Certificate, you should insert this text (you can do so using Adobe on an electronic document or, for a paper certificate, write it in pen and initial it).
- It is not necessary to insert this text for an order dispensing with the requirement to post a bond or an order deferring the payment of the estate administration tax.
- If the order directs that the Certificate with a will is limited to the assets referred to in the Will, insert the following additional line “Pursuant to this order, this Certificate of Appointment of Estate Trustee with a will is limited to the assets referred to in the Will dated XX”.
- It is not necessary to attach the order to the certificate. However, the order should be provided to the applicant and a copy of the order retained for the file.

*B) Person renounced right to be estate trustee*

If a person renounced their right to be appointed estate trustee, insert the following text on the Certificate, if not already included by the filer “(name), has renounced the right to a certificate of appointment of estate trustee”.

*C) Estate trustee named in will predeceased*

If a person named in the Will as estate trustee has predeceased the testator, insert the following text on the Certificate, if it is not already included by the filer, “(name), estate trustee named in the Will, has predeceased the testator”.

*D) Estate trustee named in will is a minor*

If a person named in the Will as estate trustee is a minor (person under the age of eighteen years), insert the following text on the Certificate, if it is not already included by the filer, “(name), estate trustee named in the Will is a person under the age of eighteen years”.

*E) Estate trustee is mentally incapable adult*

If a person named in the Will as estate trustee is a mentally incapable adult, insert the following text on the Certificate, if it is not already included by the filer, “(name), estate trustee named in the Will is a mentally incapable adult”.

*F) Occupation is indicated on certificate and not specified in Application*

If the deceased’s occupation is specified on the draft Certificate of Appointment, but is not specified in the Application, record in the Estates System that the occupation of the deceased was specified in the draft Certificate but was not specified in the Application and then continue with the processing of the Application.

- 7) Sign and date the Certificate digitally or manually. Where the certificate is issued manually, print or stamp your full name beneath your signature. Apply the court seal (manual or digital seal) in the top left corner of the first page [\[rule 4.05\(1.1\)\(a\)\]](#). Indicate the court office address under your signature. Indicate the court file number in the top right corner of the first page. See [Sections 8.4.2](#) and [8.3.2](#) for details regarding the steps for manual issuance and electronic issuance.
- 8) Within one business day of issuance, send the issued Certificate to the filer of the Application (by email or mail, in accordance with the steps set out under [Sections 8.4.2](#) and [8.3.2](#)). Include along with the issued Certificate two notices:

1. CSD notice regarding how to authenticate an electronically issued certificate (PDF attachment);



CSD Notice to  
Public and Legal Pro

2. Ministry of Finance (MOF) notice regarding the requirement to deliver to MOF an Estate Information Return within 180 days of issuance of the Certificate ([Estate Administration Tax Act, 1998](#) requirement).



Memo - MOF  
Information Notice.†

- 9) Place a copy of the issued Certificate in the court file.
- 10) Ensure you have recorded the Certificate and issuance in the Estates System (see Section 8.2.2.1 below).

### 8.2.2.1 How do I record the Certificate and Issuance in the Estates System?

Once all of the Application requirements are met and you are satisfied that the evidence and information submitted is satisfactory and there are no legislative bars to issuance, and the clearance search is “clear”, take the following steps.

- 1) Locate the file in the Estates System under “**Documents**”, then select “**Application**” on the menu bar
  - Workflow Status should read “Clearance Process Run” with Clearance Result as “Clear” or “Judges Endorsement” with Clearance Result as “Not Clear”.
- 2) Select the icon under “**Edit/View**” or select the hyperlinked “**File Number**” to open the Application screen.
- 3) Enter the “**Certificate Date**”. The certificate date must be the same date that the clearance search was run.
  - a.
  - b. You can manually type the date or select the calendar icon to input the date
- 4) Select “**Save**”
  - The following message in blue will appear at the top of the screen:

21-APR-2021 31-OCT-1957 Codicil 2 Date:

---

Clearance Search Completed: 13-NOV-2021 Withdrawal Date:

Asset Value: 0.00 Clearance Result:  Clear  Not Clear Revoke Date:

Fee Paid: 0.00 **Certificate Date: 13-NOV-2021** Notice Served:

Contentious:  Yes  No Notice of Appearance filed by Objector:  Yes  No

“Application with File Number: YYYY-XXXXX has been saved successfully”


- Select the blue icon under “**Workflow Action**” and this will take you to Application Detail screen

to: Files to include? All Files

Clearance search completed from: to:

Workflow Status: Small Estate Group (SEG):

Add

Clearance Result	Workflow Status	Registrar's Notice	Workflow Action	Objection/Request Search	History
Clear	Clearance Process Run			Objection/Request Search	History

- Select “Issue a Certificate”, then select “Apply Action”

Local Registrar Documents Search Reports System

You are here: Documents > Application > Detail

Application

Workflow Actions

Actions:  Re-Submit for clearance  Issue a Certificate Message:

- The following message in blue will appear: “Action has been done successfully”
- The “Workflow Status” should now indicate “Certificate Issued”.

Local Registrar Documents Search Reports System

You are here: Documents > Application List

Action has been done successfully

Court: Toronto File Number: 2021-012734 Received date from: to: Files to include? All Files

First Given Name: Second Given Name: Third Given Name: Surname: Clearance Result Clearance search completed from: to:

Application Type: Workflow Status:

Active File: All Small Estate Group (SEG):

Search Clear Search Add

Edit/View	Fix Bad Record	SEG	Court	File Number	WIP?	Edit as WIP	Received date	First Name	Surname	Clearance Result	Workflow Status	Registrar's Notice	Workflow Action	Objection/Request Search	History
		Y								Clear	Certificate Issued				History

- You may proceed to issue the Certificate (Form 74C, 74.1C or 74.1F). See [Section 8.3](#) - Electronic Issuance and [Section 8.4](#) - Manual Issuance.

Once you have applied the Workflow Action “Certificate Issued” you must issue the Certificate (Form 74C, 74.1C or 74.1F) on the same day.

### 8.2.3 How are Certificates issued when a Will was signed or subscribed in counterpart?

Where a Will was signed or subscribed in counterpart, ensure that the issued Certificate has attached to it a copy of each of the signed or subscribed copies of the Will that were filed with the court.

The following statement may be added to the Certificate “The Will was executed remotely and signed in counterpart pursuant to *Succession Law Reform Act*”.

## 8.3 Electronic issuance

Effective January 1, 2021 all Certificates and any other court documents that require issuance may be signed by a Registrar electronically [[R.4.01.1\(2\)](#)], issued electronically [[R.4.05\(1.1\)\(a\)](#)], and sent to an applicant/lawyer by email [[R.4.12\(1\)](#)].

As a result, Certificates of Appointment of Estate Trustee (Form 74C) and Small Estates Certificates (Forms 74.1C and 74.1F) can be issued electronically.

### 8.3.1 When should a Certificate be issued electronically?

A Certificate must be issued electronically where the Application was filed by email unless the applicant requested a paper certificate at the time of filing of the Application.

Only one Certificate may be issued, whether electronically or in paper form. If an electronic Certificate was issued, the Registrar cannot sign and seal a paper Certificate. However, you can deliver a certified copy of the Certificate in paper form by printing the digital certificate and certifying it as a copy.

See [Civil Procedures Manual](#) for details on the process to electronically certify a court document.

### 8.3.2 How is a Certificate issued electronically?

Where an Application is received by email, Registrars are authorized, using their Government of Ontario, Public Key Infrastructure (GO-PKI) Certificate, to digitally sign and electronically issue a Certificate of Appointment of Estates Trustee and Small Estates Certificate using a digital signature and apply the electronic court seal to the Certificate. The electronic court seal should be applied only to the first page of the Certificate and should not be applied to any other pages of the Certificate.

To issue a Certificate electronically, as the estates registrar who processed the application:

- i. digitally sign the probate certificate using a GO-PKI Certificate and apply the electronic court seal;

Refer to the GovTechOn's [Guide to Managing Digital Signatures in Adobe Acrobat and Reader DC](#) and the [How to Create and Apply Digital Signatures and Court Seals to Documents Guide](#) for more information.

- ii. Within one business day of issuance of the Certificate, email the electronically issued Certificate to the Applicant or Applicant's lawyer.
  - Or, if you issued the Certificate for another court location, email the issued Certificate to the Applicant or Applicant's lawyer and copy (Cc) the originating court location so that they are aware the certificate has been delivered.

Attach to your email containing the electronic Certificate two notices:

1. CSD notice regarding how to authenticate an electronically issued certificate (PDF attachment);



CSD Notice to  
Public and Legal Pro

2. Ministry of Finance (MOF) notice regarding the requirement to deliver to MOF an Estate Information Return within 180 days of issuance of the Certificate.



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Information Notice.1

- iii. Save the electronically issued Certificate and all documents and all emails (sent and received) in an electronic sub-folder for each court file in OneDrive/SharePoint.

## 8.4 Manual issuance

### 8.4.1 When should a Certificate be issued manually?

A Certificate should be issued manually where the Application was filed by mail, registered mail, courier or at the court counter.

In addition, a Certificate should be issued manually if an applicant requested a manually issued Certificate at the time they filed their Application by email.

Only one Certificate may be issued, whether electronically or in paper form. If an electronic Certificate was issued, do not sign and issue a paper Certificate.

However, you can deliver a certified copy of the electronic Certificate in paper form by printing the digital certificate and certifying it as a copy. See [Civil Procedures Manual](#) for process to electronically certify a court document.

### 8.4.2 How is a Certificate issued manually?

To manually issue a Certificate apply your handwritten signature and print or stamp your full name, the date of issuance and emboss the court seal on the Certificate. It is not necessary to emboss the court seal on each page of the Will that is attached, if any.

Within one business day of issuance of the Certificate, send the manually issued Certificate for delivery by mail to the filer's address indicated in the Application or, where requested, ensure the issued Certificate is available for pickup. Attach a paper copy of the two notices to the Certificate (see sections 8.2.2 and 8.3.2 for information about the notices). Court locations that use a central mail processing office should ensure the manually issued Certificate is available for pickup within one business day of issuance.

Place a copy of the issued Certificate in the physical court file.



## 8.5 Issuance of a Certificate of Appointment of Estate Trustee

To issue a Certificate of Appointment of Estate Trustee ([Form 74C](#)), follow the steps set out in [Section 8.3 “Electronic Issuance”](#) and [Section 8.4 “Manual Issuance”](#).

In addition, ensure that the Certificate includes only one Certificate type and that the other Certificate types are deleted. One of the following Certificate types should be selected from Form 74C:

(Check only one of the following certificate types and delete all others)

- |                          |   |
|--------------------------|---|
| <input type="checkbox"/> | Certificate of Appointment of Estate Trustee with a Will  |
| <input type="checkbox"/> | Certificate of Appointment of Estate Trustee with a Will Limited to the Assets Referred to in the Will            |
| <input type="checkbox"/> | Certificate of Appointment of Estate Trustee without a Will   |
| <input type="checkbox"/> | Certificate of Appointment of Foreign Estate Trustee’s Nominee as Estate Trustee without a Will                   |
| <input type="checkbox"/> | Certificate of Appointment of Succeeding Estate Trustee with a Will   |
| <input type="checkbox"/> | Certificate of Appointment of Succeeding Estate Trustee without a Will  |
| <input type="checkbox"/> | Certificate of Appointment of Succeeding Estate Trustee with a Will Limited to the Assets Referred to in the Will |
| <input type="checkbox"/> | Certificate of Appointment of Estate Trustee During Litigation  |
| <input type="checkbox"/> | Certificate of Ancillary Appointment of Estate Trustee with a Will  |

If one Certificate type is selected, but the other Certificate types are not deleted, do not send a Registrar’s Notice. Prepare a Certificate with the required information and delete the boxes that are not applicable.

## 8.6 Issuance of Small Estate Certificate or Amended Small Estate Certificate

### 8.6.1 How is a Small Estate Certificate issued?

To issue a Small Estate Certificate ([Form 74.1C](#)), follow the steps set out in [Section 8.3](#) “Electronic Issuance” and [8.4](#) “Manual Issuance”.

In addition to taking those steps, you must also confirm that:

- i. the value of the estate does not exceed \$150,000
- ii. the documents listed in the draft Small Estate Certificate ([Form 74.1C](#)) are the same as the documents listed in the Application ([Form 74.1A](#)).

Send a Registrar’s Notice if the estate value is more than \$150,000 or the documents in the draft Certificate and Application are not the same. (See [Section 9](#) “Registrar’s Notice to Applicant”)

### 8.6.2 How is an Amended Small Estate Certificate issued?

To issue an Amended Small Estate Certificate ([Form 74.1F](#)), follow the steps set out in [Section 8.3.1](#) “When should a Certificate be issued electronically” [8.4](#) “Manual Issuance” and [Section 8.5](#) “Issuance of Certificate of Appointment of Estate Trustee”.

In addition to taking those steps, you must also confirm that:

- 1) the value of the estate, including the value of the newly discovered assets, does not exceed \$150,000
- 2) the property listed on the issued Small Estate Certificate ([Form 74.1C](#)) is listed in the Amended Small Estate Certificate ([Form 74.1F](#))
- 3) the property discovered after the issuance of a Small Estate Certificate is listed in the Amended Small Estate Certificate ([Form 74.1F](#)).

## Section 9. Registrar's Notice to Applicant

### 9.1 When should a Registrar's Notice be completed?

You must refuse to issue a Certificate of Appointment of Estate Trustee ([Form 74C](#)), Small Estate Certificate ([Form 74.1C](#)) or Amended Small Estate Certificate ([Form 74.1F](#)), if you determine that:

- 1) issuance is prevented by section 16 of the [Estates Act](#),
- 2) the Application for the Certificate of Appointment does not contain the information, evidence and supporting documentation required by the court rules or under any Act, or
- 3) the applicant has not met the requirements of subrule 74.13 (1) or (2), or has not obtained an order under subsection 4 (1) of the [Estate Administration Tax Act, 1998](#).

[[Rules 74.14\(3\)](#), [74.1.04\(3\)](#) and [74.1.05\(3\)](#)].

Circumstances which require a Registrar's Notice to be delivered are set out throughout this manual. See [Section 3.2](#) "Jurisdiction", [Section 6](#) "Application Review", [Section 7](#) "Estates Court Records Search", [Section 8.1](#) "Readiness for Issuance" and [Section 14.1](#) "Notice of Objection".

### 9.2 How is a Registrar's Notice completed?

To prepare a Registrar's Notice to Applicant complete:

- 1) Form 74O for an Application for a Certificate of Appointment of Estate Trustee ([Form 74A](#) Application)
- 2) Form 74.1D for an Application for a Small Estate Certificate of Amended Small Estate Certificate ([Form 74.1A](#) or [74.1E](#) Application)

Do not modify Form 74O or 74.1D. These forms are prescribed by law. If necessary, enter additional information in the "other" section of the forms.

Complete the Form 74O or 74D by selecting the reason/s that the Certificate of Appointment cannot be issued. The content of the forms is reproduced below.

Date and sign the Registrar's Notice and insert the court address. Your signature can be applied digitally in Adobe with your PKI credentials.

You have applied for a Certificate of Appointment of Estate Trustee (or Small Estate Certificate or Amended Small Estate Certificate) for the Estate of *(insert name)*, deceased.

**A. Insert, if applicable:**

Pursuant to s.16 of the *Estates Act* a Certificate cannot be issued because:

**Insert the applicable reason:**

- another Application has been filed in respect of the estate.
- there is a notice of objection in effect under rule 75.03.
- a Will or codicil of a later date than that contained in your Application was deposited in the Superior Court of Justice.
- a Will or codicil was deposited in the Superior Court of Justice and your Application indicates that the deceased died without a Will.

**B. Insert, if applicable:**

Pursuant to rule 74.14(1) of the *Rules of Civil Procedure*, a Certificate cannot be issued because:

**i. Insert the applicable reason:**

- the required information was not provided.
- the required evidence or documentation was not filed.
- a motion is required.
- the deposit required by the *Estate Administration Tax Act* was not paid or was not paid in full or an undertaking was not filed under s.4(3) of that Act and there is no court order dispensing with the requirement to pay such deposit.
- other.

**ii. Insert details:**

Details regarding the issue are set out below (e.g., identify the missing information/evidence/documentation):

---

### 9.3 How should a Registrar's Notice be delivered?

Email the completed Registrar's Notice to Applicant [[Form 74.O](#) or [Form 74.1D](#)] to the Applicant or Applicant's lawyer to the email address that is in the court file (pursuant to [rules 4.12\(1\)](#), [74.14\(5\)](#) and [74.1.04\(5\)](#)). An email address for a filer of an Application should be contained in the Application and affidavits (for example, in the contact section of Form 74A, 74.1A, 74B, 74B.1, 74.1B).

Where the email address of a lawyer is not available in the court file, determine their email address by visiting the [Law Society of Ontario website](#) and send the notice to that address ([rules 4.12\(1\)](#), [74.14\(5\)](#) and [74.1.04\(5\)](#)).

If an email address is not available in the court file and the filer is not a lawyer, the Registrar's Notice to Applicant can be mailed to the filer.

### 9.4 How should a Registrar's Notice be maintained?

Retain the completed Registrar's Notice to Applicant ([Form 74O](#) or [74.1D](#)) in the court file.

The Registrar's Notice can be saved electronically on OneDrive/SharePoint or in the physical file (follow the CSD guide: "[Best Practices for Receiving and Storing Documents by Email, Appendix: Creating and applying digital signatures](#)").

Record a note in the Estates System the date the Registrar's Notice [[Form 74O](#) or [Form 74.1D](#)] was sent to the filer and the method of delivery (for example, emailed to (name) on (date)).

### 9.5 What circumstances do not require a Registrar's Notice?

Circumstances where a Registrar's Notice should not be completed are set out throughout this manual.

Situations where a Registrar's Notice should not be completed are set out in [Table 12](#) below:

**Table 12. Circumstances that do not require a Registrar’s Notice**

Document Type	Circumstances that <u>do not</u> require a Registrar’s Notice	Comments/action
<b>Applications</b> (Forms 74A, 74J, 74.1A, 74.1E)	Missing a response to an optional question or a situation that does not apply to the applicant.	Disclosure is optional or situation does not apply.
	Missing a Backsheet ( <a href="#">Form 4C</a> ), but the filer contact information is contained in the Application form (contained in the last page of Forms 74A, 74.1A or 74.1E).	Information is provided on the last page of the Application form.
	Missing Applicant’s wet ink signature.	This is no longer required since affidavits can be signed digitally. See <a href="#">Section 3.5</a> Digital Signatures and <a href="#">Section.3.6</a> Remotely Commissioned Affidavits.
	Missing Applicant’s occupation or indicates “retired” as the occupation.	The Application asks for the disclosure of an applicant’s “Occupation, if any” in the Contact Information section.
<b>Applications with a Will</b>	Missing a response to Part 7 the beneficiary’s “Relationship to the Deceased” or leaves this box blank.	Applicant may not be aware of the beneficiary’s relationship to the deceased or the deceased may not have had a relationship to the beneficiary named in the Will.
<b>Form 74A Application</b>	Value of the estate is less than \$150,000.	Applicant has the option to apply for a Certificate of Appointment of Estate Trustee (Form 74A) rather than apply for a Small Estate Certificate (Form 74.1A).
<b>Affidavits</b>	Affidavit is remotely commissioned, and the Exhibit pages indicate that the affidavit was “sworn before me”.	If the date, the name of the affiant and the signature of the commissioner match on the stamp do not reject the document.
	Affidavit does not comply with current font size requirements or have minor variations in wording.	Seek judicial direction regarding any issues relating to wording.
<b>Affidavit of Execution of Will or Codicil</b> (Form 74D) or <b>Affidavit of Condition of Will or Codicil</b> (Form 74E)	Applicant filed in <a href="#">Form 74.8</a> or <a href="#">Form 74.10</a>	These versions of the forms can be filed together with the application. Affidavits of Execution are typically signed at or shortly after the signing of the Will. As a result, they would be drafted to comply with the rules of court and prescribed forms in place at that time. It is time consuming and expensive to recreate an Affidavit of Execution to comply with the current rules and forms requirements, as witnesses can be difficult to locate.
<b>Affidavit or Certificate of Service</b> (Form 74B or Form 74B.1) or <b>Request to File an Application for a Small Estate Certificate</b>	Does not attach the Application as an exhibit.	It is not necessary to attach the Application as an exhibit to the affidavit of service/certificate of service.

Document Type	Circumstances that <u>do not</u> require a Registrar's Notice	Comments/action
<b>or Amended Small Estate Certificate</b> (Form 74.1B)		
<b>Will</b>	<p>Will includes a reference to a memorandum (or "list" or "precatory memorandum") that expresses the wishes of the testator that "may have been prepared by me [the testator]" or "that I [the testator] will prepare" and the memorandum or list is not filed with the Application, you should not reject the Application.</p> <p>Original Will is not marked with an exhibit stamp on the back, but the exhibit stamp is placed elsewhere on the Will or it is placed on a separate sheet before the Will attachment (on a separate sheet placed before the Will and after the Affidavit).</p> <p>A copy of the Will was attached to the draft Certificate but was inserted after the back page of the Certificate.</p> <p>Will includes a reference to a document (for example a Cohabitation Agreement) and the document is not filed with the court.</p>	<p>This document is not required to be filed with the court. See <a href="#">Table 7 - Documents that must be Filed in a Form 74A or 74.1A Application</a>.</p> <p>This is not required by the RCP. The RCP require an original will to be attached to the affidavit of execution/condition.</p> <p>Insert the copy of the Will before the back page of the Certificate before issuing.</p> <p>The document may alert the estate trustees to the existence of a contract with a third party that impose obligations on the testator that bind the estate. Such a document would not be required for the purpose of the application since it is not a testamentary instrument. You may direct the application to a judge if you have any questions or concerns.</p>
<b>Proof of Death</b> (death certificate or an order made under the <i>Declarations of Death Act</i> )	<p>Where the deceased's name in the Proof of Death document indicates a name for the deceased that is listed in the Application as an alternate name in the Application.</p> <p>If there are discrepancies between the deceased's information in the Proof of Death document and the corresponding information in the Application, however the other information contained in the Proof Death document is consistent with the information in the Application and the Proof of Death document appears to identify the deceased person.</p>	<p>See <a href="#">Section 6.4: "Proof of Death"</a> for details.</p> <p>For example, there is a misspelled street address or incorrect postal code in the Proof of Death Document, however the date of birth, date of death, deceased's name and balance of the address are consistent. See <a href="#">Section 6.4 "Proof of Death"</a> for details.</p>

Document Type	Circumstances that <u>do not</u> require a Registrar's Notice	Comments/action
<b>Renunciations and Consents</b> Forms 74G and 74H dated September 1, 2021	Applicant filed Form 74G dated September 1, 2021 and/or Form 74H dated September 1, 2021.	These forms can be filed until April 1, 2024 pursuant to O.Reg. 388/23.
<b>Renunciations and Consents</b> (Form 74G dated November 2023)	Applicant completed a part of the form that does not apply (completed both parts of the November 1, 2023 version of Form 74G and the individual doesn't have a right to act as estate trustee or they are not an estate beneficiary)	Disregard the part of the form that does not apply.
<b>Draft Certificates</b> (Forms 74C, 74.1C, 74.1E)	Is missing a court address.	Write/type in the address.
	Includes a date.	Strike the date and insert the actual date that the Certificate is issued.
	Does not strike/delete: i. the types of Certificates that are not applicable (for example, in Form 74C, the boxes for Certificate type that are not checked are not deleted and should have been).  paragraphs that are not applicable (paragraphs that start with "If there is a Will, insert the following..." and "If there is a court order....")	Delete or strike the boxes or paragraphs.
	<b>Draft Small Estate Certificate</b> (Form 74.1C)	Includes bank account numbers .
Does not indicate specific vehicle details (i.e. VIN, year, make, model).		Applicant must determine what is required for the estate assets they seek to manage before starting the application.
<b>Orders</b>	Original order was not filed, unless you have concerns.	If you have concerns about the digitally signed order or copy of the order provided, seek judicial direction



## 9.6 Amendments to filed applications and/or supporting documents prior to issuance of a Certificate

### 1. **Amendments to filed Applications**

A probate Application (Application for a Certificate of Appointment) is verified by the applicant(s) affidavits. These verifying affidavits are sworn or affirmed at the end of the Application. They verify under oath or solemn affirmation that what is contained in the Application is true. The affidavit essentially takes the place of the deponent showing up in court, being affirmed or sworn, and testifying to the veracity of the Application documents.

When an affidavit is being tendered as evidence upon which the court is to rely in coming to a decision, that affidavit's contents must actually have been seen and verified by the deponent (the applicant).

As a result, you may not:

- i. make any revisions (additions, deletions, interlineations, erasures or other alterations) to a probate Application or any affidavit after it is sworn/affirmed;
- ii. allow an Applicant or filer to make any revisions (additions, deletions, interlineations, erasures or other alterations) to an Application or any affidavit after it is sworn/affirmed; or
- iii. "swap out" or "slip-sheet" (exchange pages) of a probate Application or an affidavit after it has been sworn or affirmed;
- iv. allow an Applicant or filer to "swap out" or "slip-sheet" (exchange pages) of a probate Application or an affidavit after it has been sworn or affirmed.

This is serious and involves the law of evidence and ethical principles for lawyers (*Re Peters* (2022 SKQB 186)). The court cannot grant an application for probate based on affidavits that are known to be incorrect, insofar as the deponents have never seen or verified the document filed as the probate application form.

Any alteration in an affidavit must be initialled by the commissioner taking the affidavit **before** the affidavit is sworn/affirmed by the deponent (the Applicant in a probate Application). If it is not so initialled, the affidavit shall not be used without leave of the presiding judge or officer (RCP rule 4.05(9)).

An Application which is filed with the court becomes part of the court record and it cannot be returned to a filer/applicant or replaced by a revised application.

Where an application is received and filed via email and corrections are required, staff would retain the email filed application in the electronic court file.

See Section 4.5.3 for more information about requests for withdrawal or abandonment, including the return of tax deposit payments and Section 19 for more information about file and document retention.

Where an error is made in an Application, consider the nature of the error. Unless a judge directs otherwise, if the error that requires correction relates to a:

**a. legal issue** (for example, issue of entitlement of the Applicant to apply, service of the Application on beneficiaries etc.), the Applicant can serve and file a revised Application form (a fresh application that has been sworn/affirmed after the revision is made). A revised application should have changes initialled and be sworn/affirmed with the new date after corrections were made. File the revised application in the court file (in addition to the original application).

**b. procedural issue** (for example, the address of the filer etc.), you can accept an email or letter from the Applicant or filer providing this information and file it in the court file.

Where you are satisfied that the information provided in the revised Application or email/letter is sufficient, you should proceed with processing the application unless an issue requires determination by a judge. Where an Application is corrected by way of a supplementary affidavit or email/letter, any previously filed application must remain in the court file.

Where you are uncertain whether the information or evidence provided is adequate and/or the explanation provided is sufficient, direct the application to a Judge.

## **2. Amendments to filed affidavits**

Where the filer needs to update or correct information contained in a filed affidavit such as an Affidavit of Execution, Affidavit of Condition or Affidavit of Service, they can file a fresh (new) affidavit. Any affidavit filed earlier must not be removed from the court record unless a judge directs otherwise.

You may not:

- i. make any revisions (additions, deletions, interlineations, erasures or other alterations) to a any affidavit after it is sworn/affirmed;
- ii. allow an Applicant or filer to make any revisions (additions, deletions, interlineations, erasures or other alterations) to an Application or any affidavit after it is sworn/affirmed; or
- iii. “swap out” or “slip-sheet” (exchange pages) an affidavit after it has been sworn or affirmed;
- iv. allow an Applicant or filer to “swap out” or “slip-sheet” (exchange pages) an affidavit after it has been sworn or affirmed.

## **3. Wills – No amendments**

A filer cannot revise the content of a filed Will.

In addition, you must not make any markings on the Will.

If the affiant requests that you commission the Affidavit of Execution (Form 74D), Affidavit of Condition (Form 74E) or Affidavit Regarding a Holograph Will or Codicil (Form 74F), you can add the exhibit marking to the back of the Will or to a separate page which is attached to the affidavit.

## Section 10. Judicial Determination

### 10.1 When should an Application be directed to a Judge?

A registrar shall refer an Application to a Judge for determination in accordance with the direction set out in the manual, including where:

- a. the Application is seeking an order. For example an order is being sought:
  - to dispense with the bond requirement or reduce the amount of the bond
  - to defer the payment of the Estate Administration Tax
- b. in the registrar's opinion, the Application raises any issue that requires determination by a Judge [[rules 74.14\(4\)](#) and [74.1.03\(4\)](#)].

### 10.2 What information should be provided to the Judge?

A Judge should be advised of the issue which requires resolution and the facts contained in the Application. The Judge should also be advised when a resolution/direction by endorsement is required.

### 10.3 How should the transfer of the file to a Judge be recorded?

The transfer of a file to a Judge must be recorded in the Estates System in the Application tracking tab. Select as the file location "Judge" and record the date the file was sent.

When the file is returned to the estates office, create a new entry in the Application tracking tab. Select as the file location "on site" and record the date the file was received from the Judge.

### 10.4 What steps should be taken after the Judge makes a decision?

The Judge's order or endorsement should be filed in the Court file.

If the Judge directs that a Certificate of Appointment should be issued after the required materials are filed, proceed with processing the Application. Follow the steps in [Section 7](#): "Estate Court Records Search" and [Section 8](#): "Certificate Issuance".

Send the Judge's order or endorsement to the applicant or lawyer along with the issued Certificate of Appointment (if the Judge directed issuance of a Certificate). The order or endorsement should be sent by email where an email address is contained in the court file or an email address is available for the lawyer filer on the [Law Society's website](#) [[R. 4.12\(1\)](#), [R. 59.04\(4\)\(a\)](#)]. If an email address is not available, arrange for pickup of the order or endorsement at the court counter or to send by mail.

Contact your [Central Estate Technical Table \(CETT\) representative](#) about any challenges in addressing applicant/lawyer concerns about a judicial decision.

## Section 11. Court Status Certificate and Applications for Succeeding Estate Trustee

The purpose of a Court Status Certificate is to confirm the authority of one or more individuals to act as estate trustee. A Court Status Certificate is typically issued when a Certificate of Appointment has previously been granted and there is a subsequent change in estate trustees.

[Rule 74.14.2](#) provides that a Court Status Certificate may be granted in the following circumstances:

- where an estate trustee has died and:
  - there is a devolution in executorship as a result; or
  - one or more estate trustees survive the deceased estate trustee and continue to be authorized to act in their absence
- an estate trustee has been removed by court order and another appointed in their place; or
- no change in estate trustees has occurred but the estate trustee(s) require documentation confirming their continued authority to act.

The requirements for a Court Status Certificate vary depending on which scenario applies.

Where an estate trustee dies before the administration of an estate is complete or is unwilling or unable to act, a person may bring an Application for a Certificate of Appointment of Succeeding Estate Trustee. A court order is required.

### 11.1 Certificate of Appointment was issued and the appointed estate trustee needs proof that it is still valid

An estate trustee who was granted a Certificate of Appointment may need to prove their current status as an estate trustee. For example, a bank may wish to receive confirmation that a Certificate of Appointment is still valid. The estate trustee can seek a Court Status Certificate. The original Certificate of Appointment remains valid and the Court Status Certificate would be attached to it.

#### i. Documents that must be Filed

The document that must be filed is a request for status certificate [\[R.74.14.2 \(2\)\]](#).

#### ii. Completion of Court Status Certificate

- 1) Review the original Court file (Application for a Certificate of Appointment)
- 2) Search the Estates System to determine whether an Application was filed to remove the estate trustee, a Court order was made to remove the estate trustee or the Certificate of Appointment was returned to the Court or ordered to be returned.
- 3) If no such records are found and you are satisfied that the Certificate of Appointment remains valid, complete, and sign and seal one of the following documents:

- i. Court Status Certificate - Certificate of Appointment of Estate Trustee With a Will [\[Administrative Form RR 3013, 3113\]](#)
  - ii. Court Status Certificate - Certificate of Appointment of Estate Trustee Without a Will [\[Administrative Form RR 3014, 3114\]](#)
- 4) Make a copy of the Court Status Certificate and file it in the court file.
  - 5) Attach the Court Status Certificate to the Certificate of Appointment and send it to the requestor (by email, if an address is on file or the requestor is a lawyer)
  - 6) In the Estates System, record in the “notes” screen that a Court Status Certificate was delivered.

## 11.2 Certificate of Appointment was issued and one of the appointed estate trustees needs proof that they are the sole estate trustee since a co-estate trustee died

Where two estate trustees were granted a Certificate of Appointment and one of them dies, the surviving estate trustee may need to prove that they are the sole estate trustee.

The estate trustee can seek a Court Status Certificate.

### i. Documents that must be Filed

- 1) A request for Court Status Certificate [\[R.74.14.2 \(2\)\]](#).
- 2) An affidavit confirming the death of the co-estate trustee and the circumstances under which the surviving estate trustee continues to be authorized to act, with proof of death of the deceased estate trustee attached as an exhibit to the affidavit [\[R.74.14.2 \(4\)\]](#) and [74.01](#)
- 3) Filing fee that is payable or fee waiver certificate.

### ii. Completion of Court Status Certificate

- 1) Follow the steps set out in [Section 11.1 “Certificate of Appointment was issued and the appointed estate trustee need proof that it still valid”, subsection ii.](#) “Completion of Court Status Certificate” (the document to be completed is set out below).
- 2) If you are satisfied that the surviving estate trustee has the authority to act as the sole estate trustee, complete, sign and seal the following document:
  - Court Status Certificate - Certificate of Appointment of Estate Trustee With a Will: Surviving Estate Trustee [\[Administrative Form RR 3015, 3115\]](#)

## 11.3 Certificate of Appointment with a Will was issued and the appointed estate trustee has died

### 11.3.1 Is the applicant seeking a Court Status Certificate because estate trustee has died and the executorship devolves to the estate trustee?

A Court Status Certificate may be sought by a person to confirm their authority to administer an estate because the original estate trustee (who was granted a Certificate of Appointment) has died.

A Court Status Certificate provides confirmation that a person has the authority to act as an estate trustee. It is not a court appointment of the estate trustee. The new estate trustee can provide the Court Status Certificate to third parties to confirm that they are the estate trustee of the estate. The original Certificate of Appointment to the deceased estate trustee remains valid. The Court Status Certificate issued by the court is simply attached to the original Certificate of Appointment with a Will.

Where an estate trustee with a Will has died without completing the administration of an estate (let's call it estate No. 1), if the estate trustee has left a Will and it is "probated", then the estate trustee's "executor" may be entitled to complete the administration of both the estate trustee's estate and estate No. 1. This is called "devolution of executorship":

#### *Example 1.*

A is the sole estate trustee of B's estate under a Will and was granted a Certificate of Appointment ("probated" Will). A dies before they complete the administration of B's estate. B's Will does not appoint an alternate person to act as their estate trustee in the case that A dies. A's Will appoints C as their estate trustee and is probated. C is entitled to act as the estate trustee of A's estate and is then automatically entitled to act as the estate trustee of B's estate (to take over A's duties as estate trustee of B's estate). C does not need to obtain a Certificate of Appointment for B's estate. C can be granted a Court Status Certificate.

#### *Example 2.*

A and D are the estate trustees of B's estate under a Will and were granted a Certificate of Appointment. A dies before the administration of B's estate is completed. D would continue to administer B's estate. There would be no "devolution of executorship" to A's estate trustee. However, when D dies, if they left a Will appointing E as their estate trustee and it was probated, E could act as the estate trustee of B's estate (as well as D's estate). That is, there would be a devolution of executorship to E.

#### i. Documents that must be Filed

- 1) A request for a Court Status Certificate confirming the status of a person to act as the estate trustee of an estate by devolution of executorship on the death of another person, who was the original estate trustee with a Will
- 2) A certified copy of the Certificate of Appointment with a Will for the estate trustee who died
- 3) A certified copy of the Certificate of Appointment with a Will for the original deceased's estate (estate at issue)

- 4) An affidavit setting out the circumstances authorizing the person to act as an estate trustee for the estate with proof of the death of the original estate trustee, attached as an exhibit to the affidavit [[R.74.14.2 \(3\)](#) and [74.01](#)].
- 5) Filing fee that is payable or fee waiver certificate.
- 6) In the Estates System, add the name of the new estate trustee in the “notes” screen.

## ii. Completion of Court Status Certificate

- 1) Follow all of the steps set out in [Section 11.1](#), under “Completion of Court Status Certificate” (other than the document to complete)
- 2) If you are satisfied that the requestor has status to act as the estate trustee due to devolution of executorship, complete, sign and seal:
  - o Court Status Certificate - Certificate of Appointment of Sole Estate Trustee With a Will Now Deceased [[Administrative Form RR 3018, 3118](#)].

### 11.3.2 Is the applicant seeking appointment as a Succeeding Estate Trustee because estate trustee has died?

An Application for Appointment of a Succeeding Estate Trustee can be commenced, when the original estate trustee, who was granted a Certificate of Appointment of Estate Trustee with a Will or without a Will, dies before the estate has been fully administered [[R.74.06](#)]. A Judge must decide this Application and make a court order.

11.3.2.1 Estate trustee died and the Will of the original deceased does not name an alternate in the case that their estate trustee died (or unable or unwilling to act) but the estate trustee left a Will naming an estate trustee

#### *Example 1:*

A is the estate trustee of the estate of B and was issued a Certificate of Appointment. A died before completing the administration of B’s estate. A’s Will indicates:

“In the Event that I am the last surviving Executor and Trustee of any Will or Wills immediately prior to my death then I appoint C, to be the executor and trustee of such Will or Wills in place of me.”

A’s spouse, D, is named as the estate trustee in A’s Will and obtains a Certificate for A’s estate.

B did not name an alternate estate trustee in the event that A died before completing the estate administration.

In this case, C could apply to be appointed as a Succeeding Estate Trustee (and can seek the consents of the beneficiaries to this Application). C is not entitled to a Court Status Certificate because C did not obtain a Certificate of Appointment for A’s estate (the spouse, D, obtained the Certificate for A’s estate). “Devolution of executorship” does not apply to C.



11.3.2.2 Estate trustee died and the Will of the original deceased names in their will an alternate estate trustee in the case that their estate trustee died (or unable or unwilling to act) before completing the estate administration

Where an alternate estate trustee is named in a deceased's Will, the alternate may apply for a Certificate of Appointment of Succeeding Estate Trustee if the sole original estate trustee (who was granted a Certificate of Appointment) dies.

*Example 2:*

A is the estate trustee of the estate of B and was issued a Certificate of Appointment. A died before completing the administration of B's estate. A's Will indicates that

B names person E as the alternate estate trustee if A died before completing the estate administration.

If E wishes to act as the estate trustee of B's estate, E must apply for an appointment of Succeeding Estate Trustee.

If E does not wish to act as the estate trustee of B's estate, then C can apply for an appointment as a Succeeding Estate Trustee.

11.3.2.3 One of the estate trustees died and the Will of the original deceased names an alternate in the case that one of the estate trustees died (or unable to unwilling to act) before completing the estate administration

Where an alternate estate trustee is named in a deceased's Will, the alternate may apply for a Certificate of Appointment of Succeeding Estate Trustee if one of the original estate trustees (who was granted a Certificate of Appointment) dies.

*Example 3:*

J and K are the estate trustees of the estate of L and were issued a Certificate of Appointment.

L's Will names as an alternate estate trustee person M to act in the place of either estate trustee (the place of either J or K).

J dies before the estate is administered. M can apply for an appointment as Succeeding Estate Trustee to replace J. If K is still acting as estate trustee and a Judge appoints M to replace J as estate trustee, the order would indicate that K and M are the estate trustees of the estate. The Certificate of Appointment of Estate Trustee should indicate both K and M are appointed as the estate trustees.

11.3.2.4 Estate trustee died and the Will of the original deceased does not name an alternate trustee in the case that their estate trustee died (or becomes unable or unwilling to act), and the estate trustee did not make a Will, did not name as estate trustee in their Will or the estate trustee in their Will did not apply for a Certificate of Appointment for the estate trustee's estate

A person can make an Application to be appointed as Succeeding Estate Trustee where:

- 1) the deceased's Will does not name an alternate estate trustee to act in the event that the estate trustee dies (or where estate trustee is unable or unwilling to act);
- 2) the original estate trustee who was granted a Certificate of Appointment has died; and
- 3) the estate trustee died
  - without making a Will
  - without naming an estate trustee in their Will, or
  - having made a Will but the estate trustee named in that Will does not apply for a Certificate of Appointment of Estate Trustee with a Will.

In this case, the applicant requires the consent of the beneficiaries to whom the remaining estate is yet to be distributed, or all of the beneficiaries if no distribution has been made, including charities and contingent beneficiaries. A bond is required unless an affidavit in support of the request to dispense with a bond is filed and an order is granted. No fee payable for the request. For steps relating to the bond, see [Section 6.2](#), "Bonds".

#### i. Documents that must be Filed

In an Application for a Certificate of Appointment of Succeeding Estate Trustee with a Will where estate trustee has died the following documents must be filed:

- 1) Form 74J, Application for Certificate or Confirmation of Appointment, which indicates that a Certificate of Appointment of Succeeding Estate Trustee is sought [\[R.74.06\(1\)\]](#).
- 2) The original Certificate of Appointment (issued Form 74C or 74.1C or earlier versions of the issued Certificate) or, if the original certificate is lost, a Court-certified copy [\[R.74.06\(1\)\(a\)\]](#).
- 3) The Certificate of Appointment issued for the estate trustee's estate (if any)
- 4) Affidavit with proof of death for the estate trustee
- 5) A Renunciation of Right to a Certificate of Appointment of Estate Trustee (or Succeeding Estate Trustee) With a Will [\[Form 74G](#) dated September 1, 2021 or Part A of [Form 74G](#) dated November 1, 2023] from every living person named in the Will as an alternate estate trustee who has not joined in the Application and is entitled to do so (where applicable) [\[R.74.06\(1\)\(b\)\]](#).
- 6) Certificate of Appointment [\[Form 74C\]](#) that indicates it is a Certificate of Appointment of Succeeding Estate Trustee
- 7) A bond, motion to dispense with the bond or order dispensing with the bond (not required if applicant is named as the alternate estate trustee in the Will and resides in Canada or in a country that is a member of the Commonwealth) [\[r.74.06\(1\)\(e\)](#) and [Estates Act](#) s. 35]
- 8) Consents of beneficiaries (including charities and contingent beneficiaries) to an order sought to dispense with the requirement to post a bond (not required if applicant is named as the

alternate estate trustee in the Will and resides in Canada or in a country that is a member of the Commonwealth)

9) Additional material as the Court directs [[R.74.06\(1\)\(b\)](#)].

#### ii. Issuance of Certificate of Appointment of Succeeding Estate Trustee

- 1) Enter the Application in the Estates System (follow the steps set out in [Section 3.3 “Recording Probate Application Information in the Estates System”](#).)
- 2) Ensure that all required documents set out above are filed. Review Part 2 – Application for a Certificate of Appointment of Succeeding Estate Trustee to determine the documents that the applicant is including with the application and check the package for those documents
- 3) Collect the applicable fee amount or verify when a fee waiver certificate applies.
- 4) Ensure that a bond for the remaining value of the estate is posted or a motion to dispense with the bond is filed (not required if applicant is named as the alternate estate trustee in the Will and resides in Canada or in a country that is a member of the Commonwealth).
- 5) Direct the Application to a Judge for determination.
- 6) If the Judge makes an order directing the removal of the estate trustee and appoints a replacement estate trustee, take the steps below.
- 7) Record in the Estates System the withdrawal of the existing Certificate of Appointment of Estate Trustee. Record in the “Notes” screen the reason for withdrawal is an Application for appointment of a Succeeding Estate Trustee was filed, and record the new file number and date filed.
- 8) Conduct an Estates Court Records (clearance) search or request that the local registrar do so (follow the steps set out in [Section 7 “Estates Court Records Search”](#)).
- 9) Follow the steps for Issuance of a Certificate ([Form 74C](#)) in [Section 8 “Certificate Issuance”](#). Ensure that the Certificate indicates that it is a Certificate of Appointment of Succeeding Estate Trustee.
- 10) Deliver the issued Certificate in accordance with the steps set out in [Section 8 “Certificate Issuance”](#). However, do not send the Ministry of Finance “Information Notice” along with the Certificate.

### 11.4 Certificate of Appointment without a Will was issued and the appointed estate trustee dies

When the original estate trustee who was granted a Certificate of Appointment of estate trustee without a Will dies before the estate has been fully administered, an Application for Succeeding Estate Trustee without a Will must be filed (formerly called Administration de bonis non administravit without Will annexed). The applicant must be a resident of Ontario, and must be a nominee of the persons entitled to a majority interest in the remaining value of the estate [[R.74.07](#)].

#### i. Documents that must be Filed

In an Application for a Certificate of Appointment of Succeeding Estate Trustee without a Will, the following documents must be filed:

- 1) Form 74J, Application for Certificate or Confirmation of Appointment seeking appointment as Succeeding Estate Trustee without a Will [[R.74.07\(1\)](#)].

- 2) The original issued Certificate of Appointment of Estate Trustee without a Will (issued Form 74C or Form 74.1C or the earlier versions of the issued Certificates). If the original certificate is lost or cannot be located, a Court-certified copy [\[R.74.07\(1\)\(a\)\]](#).
- 3) Consent to Applicant's Appointment as Succeeding Estate Trustee without a Will [\[Form 74G Part B\]](#) from persons entitled to share in the distribution of the remaining estate, including charities and contingent beneficiaries, and who together have a majority interest in the remaining value of the estate at the time of the Application [\[R.74.07\(1\)\(b\)\]](#).
- 4) A bond as required by s. 35 of the [Estates Act](#) [\[R.74.07\(1\)\(c\)\]](#). The amount of the bond is based on the value of the estate remaining to be administered at the time the Application is made [\[R.74.11\(1\)\(e\)\]](#). See [Section 4.3](#) for further information and procedures.
- 5) Certificate of Appointment of Succeeding Estate Trustee Without a Will [\[Form 74C\]](#)
- 6) Collect the applicable fee amount or verify when a fee waiver certificate applies.
- 7) Other material as the Court directs [\[R.74.07\(1\)\(d\)\]](#).

## ii. Issuance of Certificate of Appointment of Succeeding Estate Trustee

- Follow the steps for issuance set out in [Section 11.3.2](#)

## 11.5 Certificate of Appointment was issued and Court order is made to remove and replace the appointed estate trustee

An estate trustee who has already been appointed can only be removed and replaced by court order. An Application is made pursuant to s. 37 of the [Trustee Act](#) and [R.14.05\(3\)\(c\)](#) of the [Rules of Civil Procedure](#). See the [Civil Procedures Manual](#), Rule 14 for more information. A court order may remove the estate trustee and name the replacement estate trustee. A Court Status Certificate can be obtained on the filing of the court order removing an estate trustee and appointing a new estate trustee.

### *Example 1.*

A is appointed as sole estate trustee of B's estate. C brings an application for the removal of A as the estate trustee and replacement with C as estate trustee. C seeks to dispense with the requirement to post a bond. A Judge makes an order removing A and appointing C as the estate trustee without a bond.

### *Example 2.*

A and B are appointed as estate trustees in a Will and were issued a Certificate of Appointment. C and D bring an Application to remove A and B as estate trustees and request the dispensation of the requirement to post a bond. A Judge makes an Order removing A and B and replacing them with "substitute" estate trustees C and D and dispenses with the bond.

### *Example 3.*

A was appointed estate trustee of B's estate. A is no longer able or no longer wishes to act as the estate trustee and C is willing to act as the estate trustee. C brings an Application to remove A and to appoint C as the estate trustee. A Judge makes an order removing A and appointing C as the estate trustee.

### i. Documents that must be Filed

To seek a Court Status Certificate, the following documents must be filed:

- 1) a request for a Court Status Certificate
- 2) a copy of the issued Court order removing and replacing the estate trustee and dispensing with the bond [[R.74.14.2 \(4\)](#)]. The bond must be dealt with in the order; it cannot be dealt with as part of the request for a Court Status Certificate. If the bond is not addressed in the order, the requestor must file an Application for appointment of Succeeding Estate Trustee.

### ii. Completion of Court Status Certificate

- 1) Follow the steps set out in [Section 11.1](#) for “Completion of Court Status Certificate”
- 2) If you are satisfied that the requestor has status as the estate trustee, complete, sign and seal one of the following documents:
  - Court Status Certificate - Certificate of Appointment of Estate Trustee With a Will: Removing and Replacing the Sole Estate Trustee By Court Order [[Administrative Form RR 3016, 3116](#)],
  - Court Status Certificate - Certificate of Appointment of Estate Trustee Without a Will: Removing and Replacing the Sole Estate Trustee By Court Order [[Administrative Form RR 3017, 3117](#)],
  - Court Status Certificate - Certificate of Appointment of Estate Trustee With A Will: Removing and Replacing One or More of the Estate Trustees By Court Order [[Administrative Form RR 3028, 3128](#)]
  - Court Status Certificate - Certificate of Appointment of Estate Trustee Without A Will: Removing and Replacing One or More of the Estate Trustees By Court Order [[Administrative Form RR 3027, 3127](#)]

## 11.6 Appointed estate trustee has refused to act or dies before the testator and there is an alternate estate trustee named in the Will

A deceased’s Will may provide that they appoint a person as their estate trustee, but if that estate trustee dies before them or refuses to act, then they appoint an alternate estate trustee.

The alternate estate trustee can apply for a Certificate of Appointment of Succeeding Estate Trustee with a Will (referred to as the position of “administrator with Will annexed” in the *Estate Act*). A bond is required unless an affidavit in support of the request to dispense with a bond is filed and an order is granted. No fee is payable for the request. See [Section 11.3.2](#) for the documents that must be filed and steps to issue a Certificate of Appointment of Succeeding Estate Trustee.

## Section 12. Estate Trustees appointed outside Ontario

### 12.1 Applicant resides outside Ontario

In some circumstances, a person who does not reside in Ontario may apply to be appointed as estate trustee for a deceased person who was a resident in Ontario or who owns assets in Ontario (in Form 74A and 74.1A Applications). In some instances, additional documents such as an Administration Bond may be required. See [Section 6.1](#) “Eligibility to Apply” and [Section 6.2](#) “Bonds”.

An applicant who was appointed as an estate trustee by a court outside Ontario may apply for a Certificate or Confirmation of Appointment of Estate Trustee ([Form 74C](#)).

### 12.2 Applicant was appointed as estate trustee by a court outside Ontario or nominated by an estate trustee appointed by a court outside Ontario

If a person is appointed as an estate trustee by a court outside Ontario, they do not have the authority to deal with the estate assets in Ontario. The person must take steps in the Ontario Superior Court of Justice to seek the authority to deal with the Ontario estate assets.

There are three situations where an appointment of an estate trustee by a court outside of Ontario can be considered by a court in Ontario. Where an applicant was:

- nominated to administer the Ontario estate assets by the estate trustee who was appointed by a court in the jurisdiction where the deceased resided at death;
- appointed as estate trustee by a court outside of Ontario but within Canada or a country that is a member of the Commonwealth; or
- appointed as estate trustee by a court outside of Canada in a country that is not a member of the Commonwealth,

the person can apply for a Certificate or Confirmation of Appointment ([Form 74J](#)).

#### 12.2.1 Is the applicant an Ontario resident who was nominated by the estate trustee who was appointed by a Court outside Ontario?

Where an estate trustee without a Will has been appointed in the foreign jurisdiction where the deceased resided at death, the estate trustee must nominate a person within Ontario to act as the estate trustee to deal with the Ontario assets. Other Canadian provinces or territories and countries that are members of the Commonwealth are not considered foreign jurisdictions.

An applicant who was nominated by a person who is a foreign estate trustee (authorized by a foreign court to act as estate trustee) to administer the Ontario assets can complete an Application for a Certificate or Confirmation of Appointment ([Form 74J](#)) [[R.74.05.1](#)]. The Application should indicate that the Application is for a:

- Certificate of Appointment of Foreign Estate Trustee’s Nominee as Estate Trustee without a Will

This Application must be filed in the court office of the county or district where the deceased had assets at the time of death.

The Certificate ([Form 74C](#)) that is issued would indicate that it is a Certificate of Appointment of Foreign Estate Trustee's Nominee as Estate Trustee without a Will. This Certificate gives the foreign grant effect in Ontario [[Estates Act](#), s.52(1)]. The issued Ontario Certificate is of the like force and effect in Ontario as if it had been originally granted by the Superior Court of Justice [[Estates Act](#), s.52(1)].

i. Documents that must be Filed

- 1) Application for Certificate or Confirmation of Appointment as Estate Trustee [[Form 74J](#), [R.74.05\(1\)](#)].
- 2) Nomination of Applicant by Foreign Estate Trustee [[Form 74K](#)] who was appointed in the jurisdiction where the deceased was domiciled (resident) at the date of death.
- 3) A certified copy of the document appointing the foreign estate trustee under the seal of the Court that granted it, marked as an exhibit to the affidavit of the applicant [[R.74.05.1\(1\)\(b\)](#)].
- 4) A certificate under the seal of the foreign court that granted the original appointment, (issued within six months of the date of the Ontario Application), indicating that the foreign grant remains effective as at the date of the Certificate [[R.74.05.1\(1\)\(c\)](#)].

If the country of origin will not issue or has not issued a Certificate, ensure that an affidavit of the applicant is filed explaining why this certificate cannot be obtained and that the certified copy of the document appointing the foreign estate trustee has been certified within six months of the Ontario Application. Direct such an Application to a Judge.

- 5) A bond, the amount of the bond must be equal to the value of the Ontario assets [[Estates Act](#), s.52(3)].
- 6) A draft Certificate of Appointment [Form 74C, [R.74.05\(2\)](#)]. Ensure that the proper Certificate type is chosen: "Certificate of Appointment of Foreign Estate Trustee's Nominee as Estate Trustee without a Will".
- 7) Applicable estate tax based on the value of the Ontario assets [s. 3, [Estates Administration Tax Act](#)].
- 8) Additional materials as the Court directs.



## ii. Issuing a Certificate of Appointment of Foreign Estate Trustee's Nominee as Estate Trustee without a Will

- 1) Ensure that all required documents are filed, the Estate Administration Tax deposit was paid and a bond was posted. Review Part 3 – Application for a Certificate of Appointment of Foreign Estate Trustee's Nominee as Estate Trustee Without a Will to determine the documents that the applicant is filing with the application and check the package for those documents.
- 2) Ensure that the Certificate (grant) appointing the foreign estate trustee is certified and sealed by the issuing Court, remains in force and is dated within 6 months of the Ontario Application. This document should be marked as an exhibit to the applicant's affidavit.
- 3) If the country of origin did not issue the certificate, direct the Application to a Judge for determination.
- 4) Once the Application is complete, proceed with the estate Court record search and issuance process (see [Section 7](#) "Estate Court Records Searches" and [Section 8](#) "Certificate Issuance").

### 12.2.2 Was the applicant appointed by a Court outside of Ontario but within Canada or a Commonwealth country?

A person who has been appointed as an estate trustee of the deceased's estate by a court outside of Ontario but within Canada or a country that is a member of the Commonwealth, can make an Application for a Certificate or Confirmation of Appointment ([Form 74J](#), [R.74.08](#)).

The Application should indicate that the applicant is seeking the following:

- Confirmation by Resealing of Appointment of Estate Trustee

The Application must be filed in the court office of the county or district where the deceased had assets at the time of death.

The applicant does not have to be an Ontario resident nor does the applicant have to be nominated by the persons entitled to a majority interest in the assets in the estate. This applies to estate trustees with or without a Will [[Estates Act, s.5, 52\(2\)](#)].

Determine whether the country is part of the Commonwealth by reviewing a list of Commonwealth Countries found here: [Member countries | The Commonwealth](#).

Northern Ireland (6 counties) is part of the Commonwealth, however the Republic of Ireland (26 counties) is not part of the Commonwealth. A list of Irish counties by area can be found here: [https://en.wikipedia.org/wiki/List\\_of\\_Irish\\_counties\\_by\\_area](https://en.wikipedia.org/wiki/List_of_Irish_counties_by_area).

The Certificate ([Form 74C](#)) will indicate that is a Confirmation by Resealing of Appointment of Estate Trustee. This certificate gives the foreign grant effect in Ontario [[Estates Act, s.52\(1\)](#), [R.74.08](#)]. The issued Ontario certificate is in force and effect in Ontario as if it had been originally granted by the Superior Court of Justice [[Estates Act, s.52\(1\)](#)].



Letters of Verification issued in the province of Quebec are deemed to be a probate for this purpose [[Estates Act, s.52\(2\)](#)].

i. Documents that must be Filed

- 1) Application for Certificate or Confirmation of Appointment as Estate Trustee [[Form 74J, R.74.08\(1\)](#)].

The following boxes in Part 4 of Form 74J should be checked off:

- Two court certified copies of the original appointment under the seal of the Court that granted it with the Will attached to it or the original document and one certified copy under the seal of the Court that granted it, dated within six months of the date of this application, are being filed with this application.
- The foreign certificate or primary certificate is still effective.

- 2) Two court certified copies of the original appointment under the seal of the court that granted it with the Will attached to it, or the original document and one certified copy under the seal of the court that granted it.

- i. One of the certified copies may be marked as an exhibit to the applicant's affidavit and that copy and the Will, or if the the original of the foreign grant is filed, the original of the foreign grant and the Will, must remain within the Court file [[R.74.08\(1\)\(a\)](#)].

Note: Staff should accept the certified copy even if it is not marked as an Exhibit to the affidavit/application.

- ii. The Court certified copy must be dated within six months of the date of the Ontario Application.

- 3) A bond (Form 74L or 74M) or the bond requirement must be addressed; the amount of the bond must be equal to the value of the Ontario assets ([Estates Act, s.52\(3\)](#)). A bond is not required where the applicant is applying for a Confirmation by Resealing of Appointment of Estate Trustee with a Will and they are a resident of Canada and/or the Commonwealth (r.74.08(1)(b) and [Estates Act s. 6](#)). If a bond is required to be addressed or a court order was made addressing the bond, one of the statements below should be checked off in Form 74J under Part 8- Bond:

- I will include a bond (Form 74L or 74M) as part of the application package that is submitted to the court for filing.
- None of the estate beneficiaries are minors or mentally incapable adults without a Guardian or Attorney with authority to act in this proceeding. I am seeking an order on consent to:

- dispense with the bond requirement
- reduce the amount of the bond

and I will file with the court together with the application a draft order (Form 74I) together with a backsheet (Form 4C), an affidavit (Form 4D) and the consents of beneficiaries to the order (Form 74H) in accordance with rule 74.11(6).

- I am acting on behalf of a trust company or Public Guardian and Trustee and therefore do not need to post a bond.
- I will file a motion under Rule 37 to seek an order to reduce the amount of the bond or to dispense with the bond requirement since the request cannot be made on consent.
- A court order made by Justice (*insert name of judge*) dated (*insert date*) appoints the applicant(s) as estate trustee(s) and dispenses with the requirement for the applicant(s) to post a bond. A copy of the order will be filed together with this application.

- 4) A draft Certificate of Appointment [[Form 74C](#), [R.74.08\(2\)](#)]. Ensure that the proper certificate type is chosen “Confirmation by Resealing of the Appointment of Estate Trustee”. The following statement may be included: “*A copy of the foreign grant that is certified by the court that issued it is attached*”.
- 5) Applicable Estate Administration Tax based on the value of the Ontario assets [[Estates Administration Tax Act, s.3](#)].
- 6) Additional materials as the Court directs [[R.74.08\(1\)\(c\)](#)].

## ii. Issuing a Confirmation by Resealing of Appointment of Estate Trustee

- i. Ensure that all required documents are filed, the Estate Administration Tax deposit was paid and a bond is posted. Review Part 4 – Application for a Confirmation by Resealing of Appointment or a Certificate of Ancillary Appointment of Estate Trustee With a Will to determine the documents that the applicant is filing and check the package for those documents.
- ii. Ensure that the Certificate (grant) appointing the foreign estate trustee is certified and sealed by the issuing court, remains in force and is dated within 6 months of the Ontario Application. This document should be marked as an exhibit to the applicant’s affidavit.  
  
If the country of origin did not issue the certificate, direct the Application to a Judge for determination.
- iii. Ensure that one of the court certified copies of the foreign grant and Will are attached to the draft Certificate.
- iv. Once the Application is complete, direct the Application to a Judge for endorsement [[s.52\(1\) of Estates Act](#)].

- v. If the judge directs that the Confirmation by Resealing of Appointment of Estate Trustee is to be issued, proceed with the estate court record search process and issuance process (see [Section 7](#) “Estate Court Records Searches” and [Section 8](#) “Certificate Issuance”).

### 12.2.3 Was the applicant appointed by a Court outside of Canada in a country that is not part of the Commonwealth?

A person who has been appointed as an estate trustee of the deceased’s estate by a court outside of Canada and outside a country that is a member of the Commonwealth, can make an Application for a Certificate or Confirmation of Appointment ([Form 74J](#), [R.74.09](#)).

The Application should indicate that the Application is for a:

- Certificate of Ancillary Appointment of Estate Trustee with a Will

The Application must be filed in the court office of the county or district where the deceased had assets at the time of death.

The applicant does not have to be an Ontario resident nor does the applicant have to be nominated by the persons entitled to a majority interest in the assets in the estate.

Determine whether the country is outside the Commonwealth by reviewing a list of Commonwealth Countries found here: [Member countries | The Commonwealth](#).

Northern Ireland (6 counties) is part of the Commonwealth, however the Republic of Ireland (26 counties) is not part of the Commonwealth. A list of Irish counties by area can be found here: [https://en.wikipedia.org/wiki/List\\_of\\_Irish\\_counties\\_by\\_area](https://en.wikipedia.org/wiki/List_of_Irish_counties_by_area).

The Certificate ([Form 74C](#)) will indicate that is a Certificate of Ancillary Appointment of Estate Trustee with a Will. This Certificate gives the foreign grant effect in Ontario [[Estates Act](#), s.52(1), [R.74.08](#)]. The issued Ontario certificate is of the like force and effect in Ontario as if it had been originally granted by the Superior Court of Justice [[Estates Act](#), s.52(1)]. “Ancillary” means that the grant is aiding the original appointment of the person as the estate trustee.

#### i. Documents that must be Filed

- 1) Application for Certificate or Confirmation of Appointment as Estate Trustee [[Form 74J](#), [R.74.09\(1\)\(a\)](#)].

The following boxes in Part 4 of Form 74J should be checked off:

- Two court certified copies of the original appointment under the seal of the Court that granted it with the Will attached to it or the original document and one certified copy under the seal of the Court that granted it, dated within six months of the date of this application, are being filed with this application.

The foreign certificate or primary certificate is still effective.

- 2) Two court certified copies of the original appointment under the seal of the Court that granted it, or the original document and one certified copy under the seal of the Court that granted it.
  - i. One of the certified copies may be marked as an exhibit to the applicant's affidavit and that copy and the Will, or if the the original of the foreign grant is filed, the original of the foreign grant and the Will, must remain within the court file [\[R.74.09\(1\)\(a\)\]](#).  
  
Note: Staff should accept the certified copy even if it is not marked as an Exhibit to the affidavit/application.
  - ii. The Court certified copy must be dated within six months of the date of the Ontario Application.
- 3) If the applicant is not a resident of Canada or the Commonwealth a bond must be filed or a request made for an order dispensing with the requirement for a bond. A request for an order or the filing of a bond should be directed a judge. See sections 6.2.2 and 6.2.3.
- 4) A draft Certificate of Appointment [Form 74C, [R.74.09](#)]. Ensure that the proper certificate type is chosen "Certificate of Ancillary Appointment of Estate Trustee with a Will". The following statement may be included: "*A copy of the foreign grant that is certified by the court that issued it is attached*".
- 5) Applicable Estate Administration Tax based on the value of the Ontario assets [[Estates Administration Tax Act, s.3](#)].
- 6) Additional materials as the Court directs [\[R.74.09\(1\)\(c\)\]](#)..

## ii. Issuing a Certificate of Ancillary Appointment of Estate Trustee with a Will

- i. Ensure that the proper documents were filed and the bond and the Estate Administration Tax is paid. Review Part 4 – Application for a Confirmation by Resealing of Appointment or a Certificate of Ancillary Appointment of Estate Trustee With a Will to determine the documents that the applicant is filing and check the package for those documents.
- ii. Ensure that one of the court certified copies of the foreign grant and Will are attached to the draft certificate.
- iii. To issue the Certificate, take the steps set out in [Section 12.2.2](#) "Was the applicant appointed by a Court outside of Ontario but within Canada or a Commonwealth country?"

## Section 13. Exemplification Certificate, Certificate of Grant, Certificate of Official Document, Certified Copies and Apostille Certificate

### 13.1 Exemplification Certificate and Certificate of Grant

A person can seek to authenticate a certificate of appointment that was issued under Rule 74 (authenticate the issued Form 74C). This can be done by asking the Court location that issued the certificate of appointment for:

- (a) a certificate of grant, to be signed by the registrar, if the authentication is intended for use in Canada; or
- (b) an exemplification certificate, to be signed by the registrar and a Judge of the Court, if the authentication is intended for use outside Canada.

The authority for this request is [rule 74.14.1](#).

#### i. Documents that must be Filed

- 1) A written request (a signed letter or requisition) to the court location that issued the Certificate of Appointment of Estate Trustee [[R.74.14.1 \(a\)\(b\)](#)].

#### ii. Issuing an Exemplification Certificate or Certificate of Grant

- 1) Ensure that the request has been filed in the proper court location
- 2) Review the court copy of the Certificate of Appointment ([Form 74C](#)) in the court file to confirm that it is still in effect.
- 3) Fill out the draft Certificate (draft Exemplification Certificate or draft Certificate of Grant). Insert the file number that was used for the Certificate of Appointment ([Form 74C](#)).

The form can be found on the CSD Intranet at <https://intra.ontario.ca/mag/rules-of-civil-procedure-forms-estates>

- 4) Sign and date the draft Certificate.
- 5) Attach a copy of the Certificate of Appointment to the draft Certificate.
- 6) For Exemplification Certificate requests only:

Forward the file and draft Exemplification Certificate to a Judge for the Judge's signature. If the Certificate is signed by the Judge, make a copy of the Exemplification Certificate for the file.

- 7) Collect the applicable fee amount or verify when a fee waiver certificate applies.

- 8) Issue the Certificate of Grant or issue the Exemplification Certificate if is signed by a Judge.

## 13.2 Certificate of Official Document

A person can seek a Certificate confirming a document was filed with the court, including a Will.

### i. Documents that must be Filed

The document that can be filed to seek a Certificate of Official Document is:

- 1) A written request (a signed letter or requisition) to the court location where the file was commenced should be submitted to the Court. Alternatively, the request can be made orally.

### ii. Issuing a Certificate of Official Document

To issue a Certificate of Official Document:

- 1) Ensure that the request has been made to the proper court location
- 2) Review the court file to determine if the document in question is in the file.
- 3) Complete the Certificate of Official Document and attach a copy of the document that is contained in the court file.

The form can be found on the CSD Intranet at <https://intra.ontario.ca/mag/rules-of-civil-procedure-forms-estates>

- 4) Sign and date the Certificate.
- 5) Collect the applicable fee amount or verify when a fee waiver certificate applies.
- 6) Issue the Certificate of Official Document unless the document has a copy of the Will attached. In this case, only issue the document if the Will is proved in common form (Application for Certificate) or solemn form (Application to prove a Testamentary Instrument) and the Certificate of Appointment has been issued.
- 7) To certify the document electronically, see the [Civil Procedures Manual](#) for process to electronically certify a court document.

## 13.3 Certified copy of a Certificate of Appointment

An estate trustee may request a certified copy of the Certificate of Appointment for purposes associated with the estate management.

### 13.3.1 How is a copy of a Certificate of Appointment certified manually?

To manually certify a copy of a Certificate of Appointment that was issued on paper:

- 1) Obtain the Court copy of the Certificate of Appointment from the Court file. Confirm that it is the same certificate and is still in effect.
- 2) Make a copy of the original Certificate of Appointment and compare it against the Court's copy of the Certificate of Appointment.  
If the original certificate is not provided, make a copy of the Certificate of Appointment in the Court file.
- 3) Stamp on the front of each page of the document that you are certifying with the "Certified as a true copy" stamp. Date and sign each page of the document. Emboss the court seal over top of 'Certified as a true copy' stamp.
- 4) Collect the applicable fee amount or verify when a fee waiver certificate applies.

### 13.3.2 How is a copy of a Certificate of Appointment certified electronically?

To electronically certify a copy of a Certificate of Appointment that was issued electronically, follow the steps set out in the [Civil Procedures Manual](#).

## 13.4 Authenticating an electronically issued Certificate of Appointment

A Certificate of Appointment that is issued electronically can be authenticated electronically.

The recipient of an electronically issued Certificate of Appointment can verify:

- i. Document authenticity – confirming the identity of the person who signed the document; and
- ii. Document integrity – confirming the document has not been altered after it was signed or has only changed in ways permitted by the signer.

A person can take the following steps to authenticate an electronically issued Certificate:

- a. Double clicking on the digital signature on the document. This leads to a pop-up of a "Signature Validation Status" dialog box.
- b. Clicking on "Signature Properties" to determine the date and time the signature was applied and whether the document was modified after the signature was applied.

- c. From this pop-up box, clicking on “Show Signer’s Certificate” to view the certificate. This certificate should:
  - Display the signer’s email address (which should be an email address in the following form: `firstname.lastname@ontario.ca`);
  - Indicate that the certificate is issued by the “Government of Ontario” or “MAG” or “Ministry of the Attorney General”; and
  - Indicate that the “Selected certificate path is valid” and that the path validation checks were done at the time of signing.

Recipients of electronically issued Court documents can also take the following steps:

- a. Contact the signer by email to confirm that their role as a Court staff member and digitally signed and/or issued the electronic court document.
- b. Contact the court location to confirm the validity of the electronic court document. The Court document specifies the court contact information. This information is also available at: <https://www.ontario.ca/locations/courts> or
- c. If necessary, ask the person who is relying on the document to provide a Court certified copy of the document with a wet ink signature.

Where a person receives a paper copy of a Court document that indicates that it was:

- a. Electronically issued (it indicates that it was digitally signed and dated and includes an imprint of a digital court seal); or
- b. Electronically certified (it indicates that it was digitally signed and dated)

They can ask the person who is relying on the document for the electronic Court document. Once the recipient receives the electronic document, they can perform the steps described above to verify document authenticity and document integrity.

For details on how to apply a digital signature, an electronic Court seal and electronically issue a Court document, see the [How to Create and Apply Digital Signatures and Court Seals to Documents Guide](#) for more information.

### 13.5 Authenticating a document for use outside of Canada

On January 11, 2024, Canada joined the [Hague Apostille Convention](#). The [Hague Convention Abolishing the Requirement of Legalization of Foreign Public Documents](#) (the Convention) is a multilateral treaty, the main purpose of which is to facilitate the circulation of public documents (such as court documents) issued by one country to be used in another country.



By joining this Convention, the process to use documents abroad in signatory countries is simplified. For [Hague signatory countries](#), Official Document Services (ODS) will issue an apostille instead of the previously issued *Certificate of Authentication*. An apostille is a certificate under the Hague Convention that authenticates the origin of a public document. This process makes it easier for Ontarians to send documents abroad to 120+ countries while reducing the cost to do so.

To assist ODS when they receive a request to authenticate documents, the Estates Consulting Manager, with the Operational Support Branch (OSB) of Court Services Division will contact court locations directly on behalf of ODS to ask for a scanned copy of the document(s) in question.

Email requests will be sent to your court's generic inbox from [CSD.ApostilleRequests@ontario.ca](mailto:CSD.ApostilleRequests@ontario.ca) and you will have **10 business days** to provide the requested document to OSB. As this is an internal request, no fee is required to be collected by your court. Once you email the document requested, OSB will forward it to ODS.

Should there be any issues fulfilling the request (for example, the court file is not on site), court staff should advise the Estates Consulting Manager, OSB, via email to [CSD.ApostilleRequests@ontario.ca](mailto:CSD.ApostilleRequests@ontario.ca), as soon as possible.

Questions from the public or bar regarding how to have a document authenticated for use outside Canada or request an 'apostille certificate' for a filed court document should be directed to ODS. Contact information and additional information about ODS can be found online [here](#).

## Section 14. Contentious Proceedings

Rule 75 governs estate litigation in contentious proceedings. Contentious proceedings are commenced by an Application for directions or a motion for directions. You may not determine whether a proceeding is most appropriately commenced by application or a motion for direction, as that is an issue to be resolved by the parties and/or a judge.

### 14.1 Notice of Objection to the issuance of a Certificate of Appointment

At any time before a Certificate of Appointment is issued, any person who appears to have a financial interest in the estate may file a Notice of Objection [\[Form 75.1\]](#). An estate beneficiary may file this document with the court if they object to the applicant being issued a Certificate of Appointment of Estate Trustee.

A Notice of Objection:

- can be filed before or after an Application for a Certificate of Appointment is commenced, at any time before a Certificate of Appointment is issued [\[R.75.03 \(1\)\]](#)
- must state the nature of the objector's interest and the objection [\[R.75.03 \(1\)\]](#)
- must be signed by the objector or their lawyer [\[R.75.03 \(1\)\]](#)
- expires three years after it is filed [\[R.75.03 \(2\)\]](#).
- may be withdrawn by the objector at any time before a Court hearing or removed by Court order [\[R.75.03\(2\)\]](#).

#### 14.1.1 Was a Notice of Objection filed by a person with an interest in the estate?

- i. **If a Notice of Objection (Form 75.1) to a probate application is submitted for filing, immediately take the following steps:**
  - 1) Search the Estates System to determine whether a Certificate of Appointment (Form 74C, 74.1C or 74.1F ) has been issued.
    - a. Where a Form 74C, 74.1C or 74.1F has not been issued:
      - i. accept the Notice of Objection for filing
      - ii. record the details contained in the document in the Estates System, including the date of expiry of the Notice of Objection (3 years from the date of filing).
      - iii. Collect the applicable document filing fee or review a request to waive the fee.
      - iv. Prepare a copy of the Form 75.1, Notice of Objection, that is contained in the court file or obtain a copy from the Court location that has the Form 75.1 in its court file.
      - v. Prepare a Form 75.2, Notice that Objection has been Filed, and sign and date the form (you can apply a PKI based electronic signature).
      - vi. Send the completed Form 75.2 and the copy of the Form 75.1 to the applicant or their lawyer. Send these two documents by email to the applicant's lawyer or to a self represented applicant, if there is an email on file (rule 4.12). If a self-

represented applicant did not provide an email address, use their mailing address shown on the Application.

- vii. Record in the Estates System the date and method the Form 75.2 and 75.1 were sent to the applicant or their lawyer. Retain the original Form 75.2.

b. Where a Form 74C Certificate of Appointment has been issued:

- i. do not accept the filing
- ii. Inform the filer that a Notice of Objection [[Form 75.1](#)] may not be filed because a Certificate of Appointment has already been issued. and they may wish to seek legal advice on the options which may be available to them.
- iii. record the information that you provided the filer in the “notes” screen, the date it was provided and the method (email etc.).

c. Where a Form 74.1C or Form 74.1F has been issued:

- i. accept the filing of the Notice of Objection [[Form 75.1](#)].
- ii. Inform the filer that a Form 74.1C or Form 74.1F has been issued and the Notice of Objection will not be considered unless an Form 74.1E Application (Application to amend a small estate certificate) is commenced.
- iii. record the information that you provided to the filer in the Notes screen, the date it was provided and the method (email etc.)
- iv. record the details contained in the document in the Estates System, including the date of expiry of the Notice of Objection (3 years from the date of filing).
- v. Collect the applicable document filing fee or review a request to waive the fee.

**ii. If a Notice of Objection to a probate application was filed and the objector is seeking to withdraw the Notice of Objection or it has been removed by order of the court in accordance with R.75.03(2), immediately take the following steps:**

a. Review the:

- objector’s written request that the Notice of Objection be withdrawn; or
- court order directing the removal of the Notice of Objection

The form of a written request to withdraw an Objection to a probate application can take the form of a letter or email from the Objector (not the filer). A filer should not use a Form 74.48 to file an Objection to a probate application since that form is required for the purpose of objecting to estate or trust accounts. [See Section 17.7 Was a Notice of Objection to Accounts filed?](#) for more information.

- b. File the written request or court order in the court file for the probate application (court file where the Notice of Objection was filed).
- c. Record in the Estates System the date of withdrawal of the Notice of Objection to the probate application and identify in the Notes whether the Notice of Objection was withdrawn at the request of the objector or by order of the court. Indicate the name of the judge, if a court order, or the name of the objector and form of the request (eg. Letter or email received on (date) from (name)).

### 14.1.2 Was a system alert generated that a Notice of Objection is on file?

You may receive an alert from the Estates System that a Notice of Objection is on file when you:

- a. record a new Application for a Certificate of Appointment ([Form 74A](#), [74.1A](#) or [74.1E](#)) in the Estates System; and/or
- b. run an Estates Court Records Search (clearance search) (see [Section 7 “Estates Court Record Search”](#)).

In each of these circumstances Court staff should:

- 1) Prepare an email to the applicant or their lawyer to advise that a Notice That Objection Has Been Filed [[Form 75.2](#)].
- 2) Send the email and attach the Form 75.2 and Form 75.1 (a copy of the Notice of Objection that is contained in the court file or a copy obtained from the Court location that has the Notice of Objection in its court file) to the applicant or their lawyer. Use the email address that is contained in the Court file for a self-represented applicant, or, for a lawyer filer who did not provide an email address, use their email address on the Law Society website [[rule 4.12](#)]. If a self-represented applicant did not provide an email address, use their mailing address shown on the Application.
- 3) Enter in the Estates System “notes” field: “Application Not Processed – Notice of Objection” and the file number(s) of the Objection. Where there is more than one Objection, ensure to include each file number associated to the Objection.
- 4) Do not issue a Certificate of Appointment. Take the appropriate steps set out in Section 14.1.3, 14.1.4 and 14.1.5.
- 5) Where an applicant/filer disputes that the Notice of Objection applies to the specific estate, direct the Application to a Judge with a memo setting out the applicant/filer's rationale. A Judge can determine whether an affidavit should be filed or the Certificate should be issued.

### 14.1.3 Was a Notice to Objector filed by the Applicant?

When an applicant or their lawyer receives a Notice of Objection, they can respond by serving on the Objector and filing with the Court a Form 75.3, Notice to Objector [[R. 75.03\(4\)](#)].

See [Section 2.4](#) for flowchart.

If a Form 75.3 Notice to Objector is submitted for filing, take the following steps:

1. Record in the Notes tab of the Estates System:
  - a. the filing of a Form 75.3 Notice to Objector
  - b. the filing of an Affidavit of Service (Form 16B) or Lawyer's Certificate of Service (Form 16B.1) to prove service of the Form 75.3
2. Record in the "Notice Served" field of the Estates System:
  - a. the date of service of Form 75.3 Notice to Objector
3. Calculate 20 calendar dates from the date of service of the Form 75.3 Notice to Objector and record the date in the Notes tab of the Estates System
4. In 20 calendar days, check to determine if a Notice of Appearance (Form 75.4) has been filed by the Objector (see section 14.1.4 for details)
  - a. If a Notice of Appearance has been filed, take the steps set out in section 14.1.4
  - b. If no Notice of Appearance has been filed, and more than 20 calendar days has passed from the date of service of the Form 75.3, process the application.

#### 14.1.4 Was a Notice of Appearance filed by the Objector?

Within 20 days of service of the Form 75.3, an Objector can respond to the Applicant by serving and filing a Form 75.4, Notice of Appearance [\[R. 75.03\(5\)\]](#).

If a Form 75.4 is filed ensure that:

- 1) The filer (the Objector or their lawyer) filed proof of service of the Form 75.3
- 2) The Objector has filed the form within 20 days after service of the Form 75.3 on them.

If the Objector does not serve and file a Form 75.4 Notice of Appearance within 20 days of service of the Form 75.3:

- 1) Proceed with the processing of the Application. The Estates Court Records Search will indicate "not clear" because the Notice of Objection was filed. Record "No" in response to the field that asks if a "Notice of Appearance filed by Objector?". If there was more than one Objection on file and separate Forms 75.3 have been served and filed by the applicant or their lawyer, staff must ensure all Objectors have not served and filed a Form 75.4 Notice of Appearance within 20 days of service of the associated Form 75.3 before processing the Application.

#### 14.1.5 Was a Motion for Directions filed to address the objection?

If the Objector serves and files a Form 75.4 Notice of Appearance, the applicant must bring a motion for directions within 30 days after service of the Notice of Appearance [\[R.75.03\(6\)\]](#).

If the applicant does not do so, the Objector may bring a motion for directions [\[R.75.03\(6\)\]](#).

On the filing of a motion for directions, direct the file to a Judge.

## 14.2 Application or Motion for Directions

A Notice of Application for Directions [\[Form 75.5\]](#) or a Notice of Motion for Directions [\[Form 75.6\]](#) may be brought by an estate trustee or any person who appears to have a financial interest in an estate [\[R.75.06\(1\)\]](#).

**Application for Directions:** An Application for Directions [\[Form 75.5\]](#) may be commenced where no other proceedings have been commenced, for example an Application to prove the Will in solemn form [\[R.75.01\]](#).

**Motion for Directions:** A Motion for Directions [\[Form 75.6\]](#) may be commenced where other proceedings have already been commenced such as an Application for a Certificate of Appointment of Estate Trustee, Application for Directions to challenge to a Will [\[R.75.03\]](#). An application or motion for directions may be brought to seek an order from a Judge regarding:

- i. the issues to be tried [\[R.75.06\(3\)\]](#).
- ii. who are parties, who is plaintiff and defendant and who is submitting rights to the Court [\[R.75.06\(3\)\]](#).
- iii. who must be served with the order giving directions and the method and times of service [\[R.75.06\(3\)\]](#).
- iv. procedures for bringing the matter before the Court in a summary fashion, where appropriate [\[R.75.06\(3\)\]](#).
- v. that the plaintiff file and serve a statement of claim [\[R.75.06\(3\)\]](#).
- vi. that an estate trustee during litigation be appointed [\[R.75.06\(3\)\]](#).
- vii. an objection to the issuance of a Certificate of Appointment [\[R.75.03 \(6\)\]](#);
- viii. the validity of a testamentary instrument [\[R.75.05 \(1\)\(a\)\]](#);
- ix. the entitlement of the estate trustee to the certificate of appointment [\[R.75.05 \(1\)\(a\)\]](#);
- x. the return or revocation of certificate of appointment [\[R.75.05\(5\)\]](#).
- xi. such other procedures as are just [\[R.75.06\(3\)\]](#).

### i. Documents that must be Filed

For an application or motion for directions, ensure that the following documents are filed:

- 1) Notice of Application ([Form 75.5](#)) or Notice of Motion ([Form 75.6](#)).

In an Application or Motion for Directions under rule 75, it is not necessary to set out the names of all parties in the title of proceeding or to name an applicant and respondent or a moving party and responding party [r. 14.06(4)]. This means that the title of proceedings may be "In the Estate of John Doe". This applies to proceedings under rule 74, 74.1 and 75.

A Motion for Directions under rule 75.06 can be commenced prior to the commencement of an application or action.

- 2) Application Record or Motion Record [\[R.38.09 \(8\)\]](#)
- 3) Draft Order for Directions ([Form 75.8](#))
- 4) Proof of Service of the Notice of Application or Notice of Motion

- i. must be served on all persons appearing to have a financial interest in the estate, or as the Court directs, at least 10 days before the hearing of the Application or motion [\[R.75.06\(2\)\]](#).
- ii. Notice of Application must be served by personal service or an alternative to personal service [\[R.16.01\]](#)
- iii. Notice of Motion does not need to be served personally [\[R.37.07, R.16.01 \(4\)\]](#).

A “Memo to Court Staff Regarding a Submission” or cover letter may also be included with the filing of a motion or application for directions. The memo or cover letter will provide additional information about the filing request.

The [FRANK Data Definitions](#) and [Approved Practices](#) set out the data entry requirements of an application or motion for direction for an estate matter in the FRANK system.

## ii. Issuing a Notice of Application for Directions

A Notice of Application for Directions must be issued [\[R.14.01\]](#). To issue the Notice of Application, you must date, sign and seal it with the seal of the Court and assign a Court file number [\[R. 14.07\(1\)\]](#).

File a copy of the issued Notice of Application in the Court file [\[R.14.07\(2\)\]](#).

## 14.3 Application to prove a Testamentary Instrument

An estate trustee or any person with a financial interest in an estate, may make an Application for directions under [R.75.06](#) to have a testamentary instrument purporting to be the last Will of the deceased, proved in such manner as the Court directs [\[R.75.01\]](#). A Will may be proved in common form or in solemn form.

- **Proof in Common Form:** An issued Certificate of Appointment of Estate Trustee [\[Form 74C or 74.1C\]](#) is proof of a Will in Common Form.
- **Proof in Solemn Form:** A Will may need to be proved in Solemn Form in certain situations. These Applications must be directed to a Judge for a Court Order.

Examples of situations requiring an Application to Prove a Will in Solemn Form:

- both persons who witnessed the testator's signature on the Will cannot be located and evidence of proper execution of the Will cannot be obtained.
- only a copy of the Will can be located (original Will is lost or destroyed).

A notarial copy of a Will from Quebec may be filed without having to prove the Will in solemn form. [\[s.15 \*Estates Act\*, s.15\]](#).

In jurisdictions other than Quebec, where the original Will is required to be registered and cannot be released for filing with the estate Application, the copy Will that is filed with the Application must first be proved in solemn form.

### 14.3.1 Was an Application to Prove the Will in Solemn Form filed?

#### i. Documents that must be Filed

The following documents must be filed to seek a Court order to prove a Will in Solemn Form:

- 1) Notice of Application ([Form 14E](#) or [Form 75.5](#))
- 2) Application Record [\[R.38.09 \(8\)\]](#)
- 3) Draft Order for Directions ([Form 75.8](#))
- 4) Original Will
- 5) Proof of Service of the Notice of Application
  - must be served on all persons appearing to have a financial interest in the estate, or as the Court directs, at least 10 days before the hearing of the Application or motion [\[R.75.06\(2\)\]](#).
  - Notice of Application must be served by personal service or an alternative to personal service [\[R.16.01\]](#)
- 6) If the original Will is alleged to be lost or destroyed:
  - Copy of the Will
  - Affidavit of Applicant that rebuts the presumption that the lost or destroyed Will or Codicil was revoked
  - Consents of every person with a financial interest in the estate [\[R.75.02\(a\)\]](#).



If no consents are filed or the Judge is not satisfied that the affidavit evidence is sufficient to rebut the presumption that the Will or Codicil was revoked, an Application or motion for directions is brought to determine the manner in which the lost or destroyed Will or Codicil is to be proved] [\[R.75.02 \(b\), R.75.06 \(1\)\]](#). The Judge may make an order giving directions as to the way the Will or Codicil is to be proved.

A “Memo to Court Staff Regarding a Submission” or cover letter may also be included with the filing of the application for direction. The memo or cover letter will provide additional information about the filing request.

The [FRANK Data Definitions](#) and [Approved Practices](#) set out the data entry requirements of an application or motion for direction for an estate matter in the FRANK system.

## 14.4 Application to revoke a Certificate of Appointment

On the Application of any person with a financial interest in an estate, the Court may revoke an issued Certificate of Appointment (Form 74C, 74.1C or 74.1E) where it is satisfied that:

- The certificate was issued in error, or as a result of a fraud on the Court [\[R.75.04\(a\)\]](#);
- The appointment is no longer effective [\[R.75.04\(b\)\]](#); or
- The certificate should be revoked for any other reason [\[R.75.04\(c\)\]](#).

The Notice of Application [Form 75.5] with supporting material is made with notice served by personal service or alternative to personal service in accordance with [R.16.01](#).

The court may order that the Certificate of Appointment be returned to the Court, [\[R.75.05 \(1\)\(b\) and R.74.1.02\(2\)\]](#).

### 14.4.1 Was a court order made to revoke a Certificate of Appointment?

Where the court has ordered the revocation of the Certificate of Appointment, take the following steps:

- 1) Ensure that the certificate of appointment has been returned in accordance with the terms of the Court’s order.
- 2) File a copy of the order and the returned certificate of appointment in the court file.
- 3) Record in the court file and in the “notes” screen of the Estates System that “Certificate of Appointment, revoked by Order of Justice (Judge’s name) dated (date). Certificate of Appointment returned to the court on (date)”.

## 14.5 Motion to Return a Certificate of Appointment

A motion for a return of Certificate of Appointment ([Form 74C](#), [74.1C](#) or [74.1F](#)), may be made without notice unless the court orders otherwise [\[R.75.05\(2\) and R.74.1.02\(2\)\]](#).

A Judge may order the return of the Certificate of Appointment where:

- A determination of the validity of the testamentary instrument for which the Certificate of Appointment was issued is being sought;
- A determination of the entitlement of the estate trustee to the Certificate of Appointment is being sought [\[R.75.05\(1\)\(a\)\]](#); or
- An Application for revocation of a Certificate of Appointment has been made under [R.75.04 \[R.75.05\(1\)\(b\)\]](#).

A Court order that requires the return of a Certificate of Appointment removes the powers of a person to act as the estate trustee. The person will no longer be able to administer the estate unless a Court orders otherwise and orders the release of the Certificate of Appointment to the person.

When an order to return the Certificate of Appointment is served on the estate trustee, the estate trustee must immediately deposit the original Certificate of Appointment with the registrar [\[R.74.1.02\(2\)\]](#). The appointment has no further effect and must not be acted upon until the Court determines:

- The validity of the testamentary instrument or the entitlement of the estate trustee to the certificate of appointment under [R.75.05\(1\)\(a\)](#);
- An Application for revocation of certificate of appointment under [R.75.05\(1\)\(b\)](#), [\[R.75.05\(3\)\(a\)\]](#);
- The certificate is ordered released under [R.75.05\(6\)](#).

Where an order for the return of the certificate has been obtained, the party must move for directions under [R.75.06](#) within 30 days after the date of the order [\[R.75.05\(4-5\)\]](#). The estate trustee may move for directions at any time.

If the party who obtained the order does not apply for directions within 30 days, the estate trustee may move without notice for an order that the court release the CAET [\[R.75.05\(6\)\]](#).

### 14.5.1 Was a Court order made to return a Certificate of Appointment?

Where an estate trustee has been served with an order to return the Certificate of Appointment (CAET or SEC) the estate trustee must immediately deliver the original Certificate of Appointment to the court. The registrar will:

- 1) Ensure that the original Certificate of Appointment was returned to the court in accordance with the Court order.
- 2) Record in the court file and the “notes” screen of the Estates System that the “Certificate of Appointment was returned to the Court on (date) pursuant to the order of (Judge) pending further order of the court”.
- 3) File a copy of the order and the returned Certificate of Appointment in the court file.

## 14.6 Motion for Release of a Certificate of Appointment

An estate trustee may seek the release of a Certificate of Appointment. This motion may be brought without notice to the beneficiaries [\[R.75.05\(6\)\]](#). Alternatively, a motion for directions can be made under [R.75.05\(4\)\(5\)](#).

### 14.6.1 Was a court order made to release a Certificate of Appointment?

Where the court orders the release of the Certificate of Appointment back to the estate trustee, take the following steps:

- 1) Review the court order
- 2) File a copy of the order in the court file
- 3) Release the Certificate of Appointment back to the estate trustee. Send the Court order and the Certificate of Appointment to the estate trustee or their lawyer.
- 4) Record in the court file and in the “notes” screen of the Estates System: “Certificate of Appointment returned to (name) estate trustee on (date) pursuant to order of (Judge) dated (date)”

## 14.7 Motion for Order for Assistance

Any person who appears to have a financial interest in an estate may bring a Motion for an Order for Assistance. This includes an order to bring in a testamentary paper [\[Estates Act, s.9\]](#).

Orders for assistance may be obtained without notice to other parties (ex parte), including an order to bring in a testamentary paper, except for an order for further particulars under [R.74.15\(1\)\(e\)](#), which requires 10 days’ notice to the estate trustee [\[R.74.15\(2\)\]](#). In general, orders for assistance are used to expedite the administration of an estate. A party can always choose to bring a motion with notice even if there is no requirement to do so.

Orders for assistance and other orders may be sought by filing a motion a draft Form 74I. Types of orders for assistance are set out below (reproduced from Form 74I).

For a Certificate of Appointment of Estate Trustee with a Will Limited to the Assets Referred to in the Will under Rule 74.04(1)

For a Certificate of Appointment of Succeeding Estate Trustee with a Will Limited to the Assets Referred to in the Will under Rule 74.06(1)

To Accept or Refuse Appointment as Estate Trustee with a Will under Rule 74.15(1)(a)

To Accept or Refuse Appointment as Estate Trustee without a Will under Rule 74.15(1)(b)

To Consent or Object to a Proposed Appointment of an Estate Trustee under Rule 74.15(1)(c) (to require beneficiary to respond to probate Application)

To File a Statement of Assets of the Estate under Rule 74.15(1)(d) (to require estate trustee)

For Further Particulars under Rule 74.15(1)(e) (to require estate trustee to provide details regarding estates assets and liabilities)

To Beneficiary Witness under Rule 74.15(1)(f) (to require a beneficiary or spouse of a beneficiary who witnessed the will, or who signed for the testator, to satisfy the court that the beneficiary or spouse did not exercise improper or undue influence on the testator)

To Former Spouse under Rule 74.15(1)(g) (to require determination of the validity of the appointment of the former spouse as estate trustee or validity of a gift or interest under the will to the former spouse or general or special power of appointment of the former spouse)

To Pass Accounts under Rule 74.15(1)(h) (to require an estate trustee or trustee to pass their accounts)

To Dispense with the Requirement to Post a Bond or reduce the amount of a bond under section 37(2) or 52(3) of the *Estates Act*

To Defer Payment of the Estate Administration Tax under section 4(1) of the *Estate Administration Tax Act*

For Other Matters under Rule 74.15(1)(i)

Service of an order for assistance and an order to bring in a testamentary paper under section 9 of the [Estates Act](#) must be served by personal service, by an alternative to personal service, or as the court directs [R.74.15(3)].

The Court may require any person to be examined under oath for the purpose of deciding a motion for an order for assistance [\[R.74.15\(4\)\]](#).

### 14.7.1 Was a Motion for an Order for Assistance filed?

If a motion for an order for assistance is filed, take the following steps:

- 1) Create a file in the FRANK system and assign a civil court file number in accordance with the [FRANK Approved Practices](#) for estate matters. The court file number extension code should be “-00ES”
- 2) If the filer has included the file number assigned to a probate application, staff should not reject the filing but assign the civil court court file no. and record in the FRANK “notes” screen the probate application file number.
- 3) Record in the Estates System “notes” screen the FRANK civil court file number assigned.
- 4) Ensure that the party has filed:
  - i. Notice of motion;

In a Motion for an Order for Assistance under rule 74.15 it is not necessary to set out the names of all parties in the title of proceeding or to name a moving party and responding party [r. 14.06(4)]. , This means that the title of proceedings may be “In the Estate of John Doe”. This applies to proceedings under rule 74, 74.1 and 75.

A Motion for an Order for Assistance under rule 74.15 can be commenced prior to the commencement of an application or action.

- ii. Form 741, Draft Order (two copies);
  - iii. Affidavit in support of the Motion.
  - iv. Affidavit of Service (if the motion is being made with notice) An Affidavit of Service is required for an Order for further particulars. An Affidavit of Service is not required for an Order for Assistance but it can be filed if the party choose to do so).
- 5) Collect the applicable fee amount or verify when a fee waiver certificate applies.
  - 6) Direct the file to a Judge. Include a summary of the issue, and request that the Judge indicate the number of days within which the Order must be complied with.
  - 7) Where the file is returned with the signed order (with the number of days for compliance filled in), enter the order.
  - 8) Send the Order to the moving party or their lawyer (send by email, mail or allow for pick up at the court counter).
  - 9) Where the file is returned and the order is not signed, proceed as directed by the Judge.

A “Memo to Court Staff Regarding a Submission” or cover letter may also be included with the filing of a motion for an order for assistance. The memo or cover letter will provide additional information about the filing request.

The [FRANK Data Definitions](#) and [Approved Practices](#) set out the data entry requirements of an application or motion for direction for an estate matter in the FRANK system.

## 14.8 Motion to release a bond

Where the court required a bond to be posted, a motion must be made to the court in order to release the bond [[Estates Act, s.42](#)]. There is a fee payable for the motion. The bond cannot be cancelled without the court's approval [[Estates Act, s.43](#)]. The court may release a bond where the estate trustee has passed their final accounts or has distributed all of the assets of the estate [[Estates Act, s.43](#)].

A motion for the release of the bond should be directed to a judge who will consider the factors to determine such a motion, such as the limitation period for the filing of a dependant's relief claim against the estate (s.61 of the SLRA). Notice of the motion must be served on the Children's Lawyer where a minor has an interest in the estate, and on the Public Guardian and Trustee where a mentally incapable person has an interest in the estate.

### 14.8.1 Was an order made to release a bond?

Where an order releasing the bond on a passing of accounts is made, the registrar will place a copy of the order releasing the bond in the estate Application file.

If an order is granted releasing the bond:

- 1) Enter the order.
- 2) Send the bond, along with the original entered order, to the client by registered mail or courier, or notify the client that it can be picked up.
- 3) File a copy of the order in the court file.
- 4) Record in the court file and in the Estates System indicating the release date, the name of the person the bond was released to and the date of the order.

### 14.9 Application for removal of estate trustee

An Application for removal of an estate trustee and appointment of a replacement can be brought by any person appearing to have a financial interest in the estate [[R. 14.05\(3\)\(c\)](#)]. An example of a situation requiring such an Application is where a person who was granted a Certificate of Appointment has become mentally incapable.

This Notice of Application commences a proceeding and a document filing fee is payable.

If a Judge grants the order, the original Certificate of Appointment is not revoked.

If an Application for removal of an estate trustee is filed:

- 1) Collect the applicable document filing fee amount or verify when a fee waiver certificate applies.
- 2) Record the proceeding in the FRANK system.
- 3) Ensure that the documents filed include a Form 14E Notice of Application, proof of service and the original Certificate of Appointment (if it was issued manually).

If a Court order is made granting the removal of the estate trustee:

- 1) File the order in the court file.
- 2) Ensure that a bond is posted, unless a Judge ordered otherwise.
- 3) Review the order to determine whether the Judge ordered a passing of the accounts of the estate for the period during which the incapable estate trustee was managing the estate.
- 4) Prepare and issue a Court Status Certificate of Appointment of Estate Trustee with a Will: Removing and Replacing the Estate Trustee by court order that describes the appointment of

the original estate trustee, confirms the Court ordered removal of the estate trustee and appointment of the replacement estate trustee. See [Section 11.5](#) for the steps.

- 5) The original Certificate of Appointment is to be delivered back in order to attach the status certificate. Attach the Status Certificate and return the original Certificate of Appointment to the estate trustee or lawyer. If the original Certificate of Appointment cannot be found, a court certified copy is to be requested by the applicant or lawyer, and the Status Certificate is to be attached to the court certified copy.



## 14.10 Application for Certificate of Appointment of Estate Trustee during Litigation

An Application for a certificate of appointment of estate trustee during litigation can be commenced pursuant to [Rule 74.10](#).

### i. Documents that must be Filed

1) Form 74J, Application for Certificate or Confirmation of Estate Trustee, with the box checked “Certificate of Appointment of Estate Trustee During Litigation”. Confirm that Part 6 – Entitlement to Apply indicates that a copy of the order appointing the applicant is being filed.

2) a copy of the issued order appointing the applicant as estate trustee during litigation.

See the [Civil Procedures Manual](#) Section 59.1 - Process for Issuing and Entering an Order for the steps which would have been taken by civil court staff to issue the order. Sample orders are available on the SCJ website at:

<https://www.ontariocourts.ca/scj/practice/regional-practice-directions/toronto/>. Legal professionals may review the model “order giving directions” for a will challenge.

3) Form 74C, draft Certificate of Appointment (with the box checked for “Certificate of Appointment of Estate Trustee during Litigation”).

4) security required by the *Estates Act* (bond) unless court order dispenses with bond (r.74.10(1)(b) and [Estates Act](#) s. 6 and 35).

### ii. Issuance of Certificate of Appointment of Estate Trustee During Litigation

1) Enter the Application details in the Estates System (see [Section 3.3](#)).

2) Ensure the required documents are filed.

3) Collect the applicable court filing fee amount or verify when a fee waiver certificate applies (do NOT collect the Estate Administration Tax , it is not required)

4) Review the court order to confirm that the court has appointed an estate trustee during litigation and determine whether a bond is required or whether a bond is dispensed with. If the order does not address the issue of a bond, the bond must be posted.

5) In the Estates System, record the original Certificate of Appointment as “withdrawn”. This is required to obtain a “clear” estate court record search result. Record in the “Notes” screen the reason for withdrawal is an Application for the appointment of an Estate Trustee During Litigation was filed, and record the new file number and date filed.

6) Follow the estate court records search (clearance search) process. (see [Section 7 “Estates Court Records Search”](#)).

7) If the estates court records search is “clear”, take the required steps to issue a Form 74C Certificate (see [Section 8 “Certificate Issuance”](#)).

8) If the estate court records search is “not clear”, determine whether the document identified in the estates court records search preventing a “clear” certificate (for example, Notice of Objection) is related to the action pending for which the trustee during litigation is being appointed.

You may need to review the application material in the civil litigation file or the order may recite the evidence that was considered by the court.

If the document, for example, a Notice of Objection, was addressed in the civil litigation file:

- you do not need to send Form 75.2 to the applicant (Notice that Objection has been Filed)
- you can proceed with issuance of the Certificate of Estate Trustee During Litigation in accordance with the Judge's order. Use the "Judge's Endorsement" workflow in the Estates System, and make detailed notes of the court order in the Estates System.

If it is unclear based on the court order and civil application file or you have a doubt as to whether the "not clear" is for reasons other than or in addition to the action pending (for example, the Notice of Objection was filed after the court order, filer was not a party to the application, etc.), seek direction from a Judge regarding the document identified in the estate court records search.

## 14.11 Statement of Claim

A Judge may make an order directing a party to be designated as plaintiff and to deliver and serve a Statement of Claim Pursuant to Order Giving Directions [\[Form 75.7\]](#) under [R.75.06\(3\)\(e\)](#). The Statement of Claim is not issued as it does not commence a proceeding [\[R.75.07\]](#).

Each defendant who is served with a Statement of Claim must serve on each party and file with proof of service:

- A Statement of Defence or a Statement of Defence and Counterclaim [\[R.75.07\(1\)\(a\)\]](#); or
- A Statement of Submission of Rights to the Court [Form 75.10], [\[R.75.07\(1\)\(b\)\]](#).

If a defendant does not file one of these documents, the plaintiff does not need to obtain their consent to any settlement agreement or a consent judgment [\[R.75.07\(4\)\]](#).

The plaintiff may deliver a Reply or a Reply and Defence to Counterclaim.

## 14.12 Submission of Rights to the Court

Where a person files a Statement of Submission of Rights to the Court [\[Form 75.10\]](#) in response to service of a Statement of Claim, or on a motion or Application for directions, the person is not a party to the proceeding.

By submitting their rights to the courts, the person is entitled to be served by the plaintiff with written notice of the time and place of trial and a copy of the judgment disposing of the matter [\[R.75.07.1\(a\)\]](#). The person is also entitled to be served with written notice of settlement to which the person is entitled to consent, or file a rejection to settlement, before any consent judgment is given [\[R.75.07\(1\)\]](#).

The person submitting their rights to the court is not entitled to costs in the proceeding and is not liable for costs, except indirectly to the extent that costs are ordered paid out of the estate, nor are they entitled to service of any other material other than that referred to above [\[R.75.07.1\(b\)\]](#).

A judgment on consent following settlement must not be made without:

- The written consent of the person who submitted their rights to the court; or
- An affidavit of the solicitor of record in the proceeding attesting that a Notice of Settlement [\[Form 75.11\]](#), appended as an exhibit to the affidavit, has been personally served on the person and no Rejection of Settlement [\[Form 75.12\]](#) has been filed with the court within 10 days after service of the notice [\[R.75.07.1\(c\)\(i\)\(ii\)\]](#).

## 14.13 Claims Against an Estate – Summary Procedure

If a claim is made against an estate (either in writing or otherwise) and the estate trustee has notice or knowledge of the claim, the estate trustee can serve a Notice of Contestation [[Form 75.13](#)] on the claimant in order to use the summary procedure set out in the [Estates Act](#) [[Estates Act, s.44\(1\), 45\(1\)](#)] [[R.75.08\(1\)](#)].

The claimant must serve the Claim Against Estate [[Form 75.14](#)] on the estate trustee, and the claimant must file the Claim Against Estate [[Form 75.14](#)] and Notice of Contestation [[Form 75.13](#)], with proof of service, within 30 days after service of the Notice of Contestation [[Form 75.13](#)] on the claimant by the estate trustee [[R.75.08\(4\)](#)].

The registrar will fix a date for trial when the Claim Against Estate [[Form 75.14](#)] and Notice of Contestation [[Form 75.13](#)] are filed [[R.75.08\(4\)](#)].

The trial will proceed in a summary manner (i.e. without an Order for Directions, pleadings or pre-trial discoveries), unless the Judge considers it appropriate to give directions otherwise [[R.75.08\(5\)](#)].

### 14.13.1 Was a Claim against the estate and Notice of Contestation filed?

If a Claim Against Estate [[Form 75.14](#)] and Notice of Contestation [[Form 75.13](#)] are filed, take the following steps:

- 1) Open a civil court file in the FRANK system.
- 2) Determine whether both the claimant and the estate trustee consent to the matter proceeding in a summary manner. If both parties do not consent, direct the file to a Judge. Ask the Judge to determine whether to direct the claimant to commence an action to recover on the claim ([Estates Act, s.44\(6\), 45\(5\)](#)).
- 3) Fix a date for trial or refer the matter to trial scheduling staff to do so.

The [FRANK Data Definitions](#) and [Approved Practices](#) set out the data entry requirements of a Claim Against Estates and Notice of Contestation in the FRANK system.

## 14.14 Solicitor of Record and Declaration of authority to commence proceeding

A lawyer is a party's solicitor of record if they filed on the party's behalf:

- Notice of Objection [[Form 75.1](#)] under [R.75.03](#) [[R.75.09\(1\) 1](#)];
- Motion for return of certificate under [R.75.05](#) [[R.75.09\(1\) 2](#)];
- Motion for directions under [R.75.06](#) [[R.75.09\(1\) 3](#)].

[Rule 15.02](#) gives a party, served with an originating process naming a solicitor for the plaintiff or applicant, the right to obtain a declaration from the named solicitor as to whether they commenced or authorized the commencement of the proceeding. It also permits the person to obtain a declaration as to whether or not the solicitor has the authority of their client to commence the proceeding.

[R.15.02](#) applies as if the notice or motion in this rule was an originating process [[R.75.09\(2\)](#)].

## 14.15 Orders to Continue

A party may seek an Order to Continue signed by the registrar [[R.11.02](#)]. To do so, the party will file a requisition and a draft Order to Continue ([Form 11A](#)). This request is made without notice to any other party.

If the Order to Continue is granted, it must name the estate trustee as a party to the action.

Example: Defendant in a civil action has died and the plaintiff wishes to continue the action against the estate of the deceased. The title of proceeding that is identified in the Order to Continue should be: (plaintiff's name) versus (estate trustee name), estate trustee of the estate of XX.

A registrar cannot make an order appointing a litigation guardian. If an order appointing a litigation guardian is required, direct the Application to a Judge.

## Section 15. Depositing Wills with the Court

### 15.1 Who can Deposit a Will with the Court for safekeeping?

A person may deposit a Will or Codicil with the Court for safekeeping. A registrar shall receive and keep those Wills under such regulations as are prescribed by the rules of Court ([Estates Act](#), s.2).

The references to Will in this section should be read as including a Codicil (read as Will or Codicil).

The persons who can deposit a Will with the court for safekeeping are:

- The testator (the person who executed the Will);
- A person authorized by the testator in writing;
- A person authorized by the Court to deposit the Will;
- A solicitor who retired from practice and who held the Will at the time of his/her retirement;
- The estate trustee of a deceased solicitor who held the Will at the time of his/her death;
- The representative of a trust company that held a Will when it ceased to do business in Ontario.

This action is authorized by the [Estates Act](#), s. 2 and [R.74.02\(1\)](#).

### 15.2 How long should the Court hold the Will that is deposited?

Wills held for safekeeping for 125 years (or more) by the registrar must be deposited with the Archivist of Ontario [[R.74.02\(8\)](#)].

### 15.3 How is a Will deposited with the court?

To deposit the Will with the Court, take the following steps:

- 1) Ensure that the identification and documents listed in [Section 15.4](#) have been submitted.
- 2) Ensure that the depositor has submitted the original Will (signatures of testator and witnesses must be handwritten in ink).
- 3) Collect the applicable fee amount or verify when a fee waiver certificate applies
- 4) Record the following information on the front of the approved Envelope for Will/Codicil On Deposit [Administrative [Form RR 0111](#)] in the presence of the depositor:
  - Name and address of the depositor;
  - Full name, any other name in full by which the testator is known, and the address of the testator;
  - Date of birth of the testator;
  - Names and addresses of the estate trustee(s);
  - Date of the Will;
  - Date the Will was deposited;
  - Date that the entry was made in the Estates System;

- 5) Sign the form and print your name below your signature [\[R.74.02\(3\)\]](#).
- 6) Place the Will, the other documents and copies of the depositor's identification in the envelope and securely seal the envelope.
- 7) Initial the sealed flap of the envelope in two places [\[R.74.02\(3\)\]](#);
- 8) Immediately enter details of the deposited Will or Codicil into the Estate System;
- 9) Place the sealed envelope and contents in the Court office's secure fireproof vault or cabinet.

#### 15.4 What identification and supporting documents are required to deposit a Will with the Court?

The person depositing the Will must present all of the identification documentation listed in the applicable category. An affidavit of execution of the Will or Codicil ([Form 74D](#)) or an Affidavit of Condition of Will or Codicil ([Form 74E](#)) may be deposited along with the Will or Codicil. [\[R.74.02 \(2\)\]](#).

Where personal identification of a depositor is required, they can present as photo identification a valid driver's licence, valid passport or valid citizenship card.

A health card may not be used for personal identification [[Personal Health Information Protection Act, 2004](#), s.34(2)].

To determine what documents and identification is required from a person seeking to deposit a Will with the Court, see [Table 13](#).

**Table 13. Identification and documents required to deposit a Will with the Court**

	ID required		Additional documents required		
<b>Depositor</b>	<i>2 pieces of personal identification of depositor (one with a photo, name, address and signature)</i>	<i>1 piece of personal identification of the depositor (one with a photo, name, address and signature)</i>	Affidavit of Execution of Will or Codicil ( <a href="#">Form 74D</a> , formerly 74.8) or Affidavit of Condition of Will or Codicil ( <a href="#">Form 74E</a> , formerly 74.10)	Letter signed by testator	Other
Testator	Yes (ID should have same signature as on Will)		Yes		
A person authorized by the testator in writing		Yes (or if lawyer or representative from law firm known to staff, firm letterhead)	Yes	Yes	
A person authorized by the Court to deposit the Will		Yes	Yes		Certified copy of court order
A solicitor who retired from practice who held Will at the time of retirement		Yes	Yes	Yes (ID should have same signature as on Will)	Letter from solicitor stating the fact of their retirement
Estate trustee of a deceased solicitor who held the Will at the time of their death		Yes naming the estate trustee	Yes		Court certified copy of Certificate of Appointment of Estate Trustee (or if none, the original Will appointing the estate trustee)
Representative of a trust company that held a Will when it ceased to do business in Ontario.		Rather than personal ID, require identification of the representative that confirms association with the trust company			Letter or other evidence from trust company representative (eg. solicitor or a trustee in bankruptcy) relating to the facts of the company going out of business



## Section 16. Accessing Wills on Deposit for Safekeeping

### 16.1 Is the Testator alive when the request is made for access to the Will on deposit?

During the testator's lifetime no one is permitted to remove, copy, or inspect a Will [\[R.74.02\(5\)\]](#), except:

- The testator in person;
- A guardian of the testator's property (that is, a statutory guardian of property, a Court-appointed guardian of property);
- A person with a Court order;
- An attorney acting under a continuing power of attorney for property executed by the testator.

When a person requests access to a Will during the testator's lifetime:

a. Ensure that the person is authorized to access the Will by verifying that the required identification and supporting documents set out in the chart below are provided.

b. If the individual is authorized to **remove** the original Will:

- 1) Photocopy the Will;
- 2) Ensure that the person signs the envelope that contained the Will and prints their name and address below the signature;
- 3) Indicate the date that the Will was removed and place the photocopied Will back into the envelope together with a photocopy of the identification presented and other documents provided;
- 4) Deliver the original Will to the person requesting access;
- 5) Immediately enter the removal of the Will into the Estates System.

c. If the individual authorized to access the Will only wants to **copy or inspect** the Will:

- 1) Make a photocopy and return the original Will or Codicil to the envelope together with a photocopy of the identification presented by the person and other documents provided;
- 2) Charge the person the per-page fee for the photocopy (the PGT is **not** charged a fee);
- 3) Securely reseal the envelope, initial the flap in two places and print name under the initials;
- 4) Note on the back of the envelope the date it was opened and the name and address of the authorized person who accessed the Will;
- 5) Return the resealed envelope (along with the photocopy of the identification presented by the person and other documents that may have been provided) to the secure fireproof vault or cabinet.

**Table 14. Identification and documents required from person requesting access to Will on deposit where testator is alive.**

Person requesting access	ID required		Additional documents required		
	2 pieces of personal identification of depositor (one with a photo, name, address and signature)	1 piece of personal identification of the depositor (one with a photo, name, address and signature)	Court order	Letter	Other
Testator, in person	Yes				
Public Guardian and Trustee (PGT) as guardian of testator's property		No, however must produce employee identification.		Letter on PGT letterhead, signed by an authorized official, stating that PGT is the guardian of the testator's property by virtue of sections 15, 16, or 22 of the <a href="#">Substitute Decisions Act, 1992</a> ;	
Court appointed guardian of the testator's property	Yes (one piece of photo ID and one piece of ID with birthdate and signature)		Yes.  Court order appointing the requestor as the testator's guardian of property pursuant to <a href="#">Substitute Decisions Act, 1992, s. 22</a> .	Letter 1) requesting access to the Will in writing; 2) confirming that there are no restrictions on the guardian's Court ordered appointment that would prevent them from having access to the Will.	
Person replacing the PGT	Yes (one piece of photo ID and one piece of ID with birthdate and signature)				A valid certificate of statutory guardianship of property (of the testator), issued by PGT under seal, naming the replacement guardian.

	ID required		Additional documents required		
Person requesting access	<i>2 pieces of personal identification of depositor (one with a photo, name, address and signature)</i>	<i>1 piece of personal identification of the depositor (one with a photo, name, address and signature)</i>	Court order	Letter	Other
A person granted access by a Court Order	Yes (one piece of photo ID and one piece of ID with birthdate and signature)		Yes. Court order must authorize the Will to be accessed by the requestor and give the testator's name, address, birthdate and full name of authorized person.		
An attorney acting under a continuing Power of Attorney for Property executed by the testator.	Yes (one piece of photo ID and one piece of ID with signature)				The original and one copy of a valid continuing Power of Attorney (POA) for property (grantor's signatures on this document and Will must match). There must be two witnesses to the grantor's executing of the POA on the form unless the court orders otherwise. The POA must also state that the authority is granted to the attorney to be exercised during the grantor's incapacity to manage property [ <a href="#">Substitute Decisions Act, 1992, s.9</a> ]. Return the original continuing power of attorney to the attorney [ <a href="#">Substitute Decisions Act, 1992, s.7, 7.1, 10</a> ]. Affidavit from the attorney that states the grantor is incapable of managing property or that the grantor has reasonable grounds to believe that the testator is incapable of managing property.

## 16.2 Is the Testator deceased when the request is made for access to the Will on deposit?

After the death of a testator, any person may **copy or inspect** the Will [[R.74.02\(6\)](#)]

When a person wishes to copy or inspect a Will after the testator's death:

- 1) Ensure that the required documents outlined in the chart below have been filed
- 2) Ensure that the name, address and date of birth of the testator on the death certificate match those on the envelope containing the Will
- 3) Ask the person to sign the back of the envelope containing the Will and print their name and address below the signature
- 4) Photocopy the Will and certify it to be a true copy.
- 5) Return the original Will to the envelope together with the request to copy or inspect the Will and a photocopy of the identification presented and the death certificate.
- 6) Collect the applicable per-page fee for the photocopy or verify when a fee waiver certificate applies.
- 7) Securely reseal the envelope, initial the flap in two places and print name under the initials.
- 8) Note on the back of the envelope the date it was opened.
- 9) Return the resealed envelope to the secure fireproof vault or cabinet.

**Table 15. Identification and documents required from person requesting access to Will on deposit where testator is deceased.**

	ID required		Additional documents required		
<b>Person requesting access</b> (copy or inspect Will on deposit)	<i>2 pieces of personal identification of depositor (one with a photo, name, address and signature)</i>			Letter	Proof of death of testator (death certificate issued by Registrar General or a funeral director, or an order made under the <a href="#">Declarations of Death Act, 2002</a> ).
Any person	Yes			Yes. Letter must request to copy or inspect the Will and state the testator's name, address, and date of birth	Yes. Must be original or Notarial copy.

### 16.3 Is the testator deceased and a request for the original Will on deposit has been made?

After the death of a testator, and where a written request has been filed, the testator's Will or Codicil must be delivered to the testator's estate trustee, or to such other person as the court directs [\[R.74.02\(7\)\]](#).

When a Will is to be delivered to an estate trustee or other person as the court directs:

- 1) Ensure that the required documents outlined in the chart below have been filed.
- 2) Confirm the identity of the estate trustee against the two pieces of identification provided and ensure that the person's name matches the name of the estate trustee on the envelope containing the Will, and in the Will itself.

Release the Will to a lawyer for the estate trustee if they provide a signed direction from the estate trustee directing staff to release the Will to the lawyer.

Confirm that the estate trustee's name on the direction matches the name of the estate trustee on the envelope containing the Will and the Will itself.

Request identification to confirm the identity of the lawyer named in the direction. Retain the signed direction in the court file.

- 3) If the person is not the estate trustee or the estate trustee's lawyer, confirm the identity of the person named in the court order by the identification provided.
- 4) Photocopy the Will and certify it to be a true copy.
- 5) Require the person to sign a written receipt confirming that the person received the original Will then hand over the original Will.
- 6) Place the certified copy of the Will, the written request for the Will, photocopies of the identification presented, the death certificate (or photocopy), and the receipt in the envelope that contained the original Will [\[R.74.02\(7\)\]](#).
- 7) Immediately enter the removal of the Will into the Estates System.
- 8) Record the withdrawal date and the date the entry was made in the Estates System on the front of the envelope, sign as registrar and print registrar's name below the signature.
- 9) Return the envelope containing the photocopied Will and all other material to the secure, fireproof vault or cabinet.

**Table 16. Identification and documents required from person requesting Original Will on deposit**

	ID required	Additional documents required		
<b>Person requesting the original Will on deposit</b>	<i>2 pieces of personal identification of depositor (one with a photo, name, address and signature)</i>		Letter	Proof of death of testator (death certificate issued by Registrar General or a funeral director, or an order made under the <a href="#">Declarations of Death Act. 2002.</a> )
Estate Trustee or person named in court order	Yes		Yes. Letter must request to retrieve the original Will and state the testator's name, address, and date of birth	Yes. Must be original or Notarial copy.

## Section 17. Application to Pass Accounts

A court Application can be commenced to “pass accounts”. This Application seeks a Judge’s approval of the accounts of persons who manage the property that other persons have a financial interest in, such as an estate.

### 17.1 Who may commence an Application to Pass Accounts?

Persons who may need to account for their administration of an estate, trust or guardianship and pass their accounts include:

- estate trustees
- trustees other than estate trustees
- persons acting under power of attorney
- guardians of the property of mentally incapable persons
- guardians of the property of a minor
- persons with similar duties who are directed by the Court to prepare accounts relating to their management of assets or money [[R.74.16](#)]

An Application to pass accounts involves a Judge reviewing the accounts of these persons and reviewing their actions to manage the property and fixing their compensation, if any, for services that they rendered in administering the estate or trust.

Estate trustees and trustees must keep accurate records of estate and trust assets and transactions and file them with the court where directed by court order to do so or they choose to do so [[R.74.17](#)]. Accounts do not need to be passed where all of the beneficiaries are of legal age, are known and located, are mentally capable and are prepared to approve the accounts. An estate trustee is not entitled to compensation from an estate or trust until all of the beneficiaries have approved their proposed fee, or the court has approved the fee on an Application to pass accounts.

### 17.2 Can a person be compelled to commence an Application to Pass Accounts?

Yes. A court order may be obtained to compel an estate trustee, trustee or guardian of property to start a court Application to pass their accounts. This order can be obtained by a person with a financial interest in the estate, the attorney, guardian of property or of the person, a dependent of the incapable person, the Public Guardian and Trustee, the Children’s Lawyer, a judgment creditor of the incapable person, or any other person with leave of the court.

A beneficiary may force a mandatory passing of accounts, where they are dissatisfied with the management of the estate, by bringing a motion (without notice) to the estate trustee for an order to pass accounts [[R.74.15\(1\)\(h\)](#)].

### 17.3 Where should an Application to Pass Accounts be commenced?

An estate trustee, trustee or guardian of property may file an Application to pass accounts at the Superior Court of Justice location where the Certificate of Appointment issued. A guardian of the property may pass accounts at the Superior Court of Justice location where the guardian was appointed. Alternatively, unless a Judge has directed otherwise, an estate trustee or guardian may

pass accounts at any location of the court [R.13.1.01(2)]. A motion to transfer the proceeding to another court location can be commenced by the applicant or the persons identified in [Section 17.2 “Can a person be compelled to commence an Application to Pass Accounts?”](#) [R.13.1.02 (2)].

## 17.4 Can a person be appointed to represent an individual’s interest in the Application?

Yes, the Court may appoint a person to represent an individual’s interest on the passing of the accounts in the following circumstances:

- individual who has a financial interest in the estate is under a disability (e.g. minors and mentally incapable persons);
- individual is unknown; and
- Public Guardian and Trustee or Children’s lawyer is not authorized to represent the interest of the person, and there is no guardian or other person to represent the interest of the person [\[R.74.18\(6\)\]](#).

## 17.5 Was an Application to Pass Accounts filed?

There are two types of passing of accounts:

- Where no hearing is required (Application is heard in writing); and
- Where the Court conducts a hearing because of objections.

Both procedures are initiated in the same way [\[R.74.18\]](#).

On an Application to pass accounts, the estate trustee must obtain a date for the passing of accounts from the Court and then give notice of the date to every person having a financial interest in the estate.

### i. Documents that must be Filed

Ensure that the following documents are filed and steps taken:

- 1) Notice of Application to Pass Accounts [\[Form 74.44\]](#) (two copies) [\[R.74.18 \(1\)\]](#).

For Applications to Pass Accounts where a Small Estate Certificate or Amended Small Estate Certificate ([Form 74.1C](#) or [74.1F](#)) was issued, please ensure that “Certificate of Appointment of Estate Trustee” is changed to “Small Estate Certificate” or “Amended Small Estate Certificate” in the third paragraph of the Notice of Application form.

- 2) Affidavit Verifying Estate Accounts [\[Form 74.43\]](#) with the accounts marked as an exhibit to the Affidavit [\[R.74.18 \(1\)\(a\)\]](#).



- 3) Proof of service of the Notice of Application (Form 16B.1 Lawyer Certificate of Service or Form 16B Affidavit of Service or other proof of service authorized by Rule 16.09), a blank Notice of Objection to Accounts ([Form 74.45](#)) and draft judgment being sought [[R. 74.18\(3\)](#)].

The applicant must serve these documents on each person who has an interest in the estate. If the Public Guardian and Trustee or Children's Lawyer represents a person with an interest in the estate, the Public Guardian and Trustee or Children's lawyer must be served [[R.74.18\(8\)](#)].

If a person under disability has an interest in the estate and the Public Guardian and Trustee is not involved, the person's attorney under a continuing power of attorney for property or guardian of property must be served [[R.74.18\(3.2\)](#)].

Where the person is served in Ontario, the documents must be served **at least 60 days** before the hearing date specified in the notice of Application. If the person being served resides outside Ontario, the documents must be served **at least 75 days** before the hearing date specified in the notice of Application [[R.74.18\(4\)\(5\)](#)].

- 4) A copy of the issued Certificate of Appointment (issued [Form 74C](#), [74.1C](#) or [74.1F](#)) [[R.74.18\(1\)\(b\)](#)] and [[R.74.1.02\(2\)](#)].
- 5) A copy of the latest judgment of the Court, if any, relating to the passing of accounts [[R.74.18\(1\)\(c\)](#)].
- 6) Collect the applicable fee amount or verify when a fee waiver certificate applies (same fees are payable by Court-appointed representatives)

#### ii. Issuing Notice of Application to Pass Accounts Documents and set hearing date

- 1) Issue the Notice of Application to Pass Accounts [[Form 74.44](#)] by dating, signing and sealing the document and assign a Court file number [[R. 14.07](#), [R. 74.18\(2\)](#)].
- 2) Fix a hearing date no less than 60 days in the future in the case of a person to be served in Ontario, and 75 days in the future in the case of a person to be served outside Ontario (note, this is not required if the Application is not opposed, see [Section 17.8](#)).

Where objection to accounts are filed and are not withdrawn, or the Court declines to grant an unopposed judgment, the hearing proceeds on the hearing date specified in the notice of Application.

### 17.6 Are there Court forms for the estate accounts / trust accounts that must be filed?

No, there are no prescribed Court forms for estate accounts and trust accounts that must be filed with the court. The court rules direct the nature of the accounts that must be filed with the Court [see [R. 74.17](#)].

## 17.7 Was a Notice of Objection to Accounts filed?

An estate or trust beneficiary or their representative can serve and file a Notice of Objection to Accounts [\[Form 74.45\]](#). The Notice of Objection is used for the purpose of responding to the Notice of Application to Pass Accounts and expressing their objections to the accounts.

The Notice of Objection must be filed with proof of service of the notice on the estate trustee, trustee or guardian of property **at least 35 days** before the hearing date specified in the notice of Application [\[R.74.18\(7\)\]](#).

If the estate or trust beneficiary or their representative does not wish to object to the accounts, but would like notice of any further steps in the Application (such as a request for costs or a request for increased costs), the person must serve on the applicant and file with the Court, with proof of service, **at least 35 days** before the hearing date specified in the notice of Application, a Request for Further Notice in Passing of Accounts [\[Form 74.45.1\]](#)[\[R.74.18\(8\)\]](#)

If the Public Guardian and Trustee or Children's Lawyer represents a person with an interest in the estate, the Public Guardian and Trustee or Children's Lawyer (as the case may be) must serve on the estate trustee one of the following 4 documents:

- A Notice of Objection to Accounts [\[Form 74.45\]](#);
- A Request for Further Notice in Passing of Accounts [\[Form 74.45\]](#);
- A Notice of No Objection to Accounts [\[Form 74.46\]](#); or
- A Notice of Non-participation in Passing of Accounts [\[Form 74.46.1\]](#).

They must also file one of these four documents, with proof of service, **at least 30 days** before the hearing date of the Application [\[R.74.18\(8\)\]](#).

If a person served with the Notice of Application to Pass Accounts [\[Form 74.44\]](#) does not file a Notice of Objection [\[Form 75.1\]](#) or Request for Further Notice in Passing of Accounts [\[Form 74.45.1\]](#), the person is not entitled to notice of any further step in the Application and cannot participate at a hearing [\[R.74.18\(8.2\)\]](#).

If a person filed a Notice of Objection to Accounts [\[Form 74.45\]](#) but wishes to withdraw it, they must do so by serving the Notice of Withdrawal of Objection [\[Form 74.48\]](#) on the applicant and filing it with proof of service **at least 15 days** before the hearing date [\[R.74.18\(8.4\)\]](#).

## 17.8 If the Application is unopposed, can it proceed without an oral hearing?

Yes, a Judge can determine whether to pass the estate or trust accounts based only on written Application material, without a Court hearing. This can happen when the Application is unopposed by the parties. That is, where no notices of objection were filed (or were filed and formally withdrawn), a judgment on passing accounts without a hearing may be granted by the Court.

## i. Documents that must be Filed

Ensure that the following documents are filed **at least 5 days** before the hearing date:

- 1) An Application record containing:
  - An Affidavit of Service of the Notice of Application (Form 16B) or a Lawyer's Certificate of Service (Form 16B.1), and a copy of a draft judgment referred to in [R.74.18\(4\)\(5\)](#) [\[R.74.18\(9\)\(a\)\(i\)\]](#);
  - Notice of No Objection to Accounts [\[Form 74.46\]](#) and/or a Notice of Non-Participation in Passing of Accounts [\[Form 74.46.1\]](#) received from the Children's Lawyer and the Public Guardian and Trustee, if served [\[R.74.18\(9\)\(a\)\(ii\)\]](#);
  - An Affidavit in Support of Unopposed Judgment of Passing of Accounts [\[Form 74.47\]](#) of the applicant or applicant's solicitor stating:
    - That a copy of the accounts was provided to each person served with the notice of Application who requested a copy of the accounts
    - The time for filing Notices of Objection to Accounts [\[Form 74.45\]](#) has expired, and that no Notice of Objection to Accounts [\[Form 74.45\]](#) was received from any person served or, if a Notice of Objection to Accounts [\[Form 74.45\]](#) was received, it was withdrawn and the Notice of Withdrawal of Objection [\[Form 74.48\]](#) is attached to the affidavit [\[R.74.18\(9\)\(a\)\(iii\)\]](#);
  - Requests for Costs [\[Form 74.49\]](#), if any, of the persons served [\[R.74.18\(9\)\(a\)\(iv\)\]](#). See [Section 17.9](#) regarding requests for increased costs;
  - Request for Further Notice in Passing of Accounts [\[Form 74.45.1\]](#), if any [\[R.74.18\(8\)\]](#);
  - Requests for Increased Costs [\[Form 74.49.2](#) or [74.49.3\]](#), cost outlines [\[Form 57B\]](#) and responses to requests for increased costs [\[R.74.18\(9\)\(a\)\(iv.1\)\]](#); and
  - A certificate of the solicitor stating that all documents set out above are included in the record [\[R.74.18\(9\)\(a\)\(v\)\]](#).
- 2) Form 74.50, draft of the judgment on Unopposed Passing of Accounts (two copies) [\[R.74.18\(9\)\(b\)\]](#).
- 3) If the Children's Lawyer or the Public Guardian and Trustee was served and did not file a notice of non-participation in passing of accounts, a copy of the draft judgment approved by the Children's Lawyer or Public Guardian and Trustee [\[R.74.18\(9\)\(c\)\]](#).

## 17.9 If the Application is unopposed, can a party seek increased costs?

Where a Court grants judgment without a hearing, the costs awarded shall be assessed in accordance with Tariff C of the *Rules of Civil Procedure*, or further to a request for increased costs as provided under [R.74.18\(11\) to \(11.4\)](#).

If costs being sought are greater than the amount allowed under Tariff C, the estate trustee or other person must serve on every other party to the Application a Request for Increased Costs (Estate Trustee) [[Form 74.49.2](#)] or Request for Increased Costs (Person Other Than Estate Trustee) [[Form 74.49.3](#)] specifying the amount of costs being sought and a Costs Outline [[Form 57B](#)] **at least 15 days** before the hearing date of Application [[R.74.18 \(11\) and \(11.1\)](#)].

Unless the court orders otherwise, a request for increased costs and costs outline must be served **at least 15 days** before the hearing date of the Application:

- On every person who has served and filed a notice of objection to accounts, even if they have since withdrawn it;
- On every person who has served and filed a request for further notice in passing of accounts;
- On the Public Guardian and/or Trustee or Children's Lawyer, if they were served with the notice of Application and did not file a notice of non-participation in passing of accounts [[R.74.18 \(11.1\)](#)].

Any objection or consent to a request for increased costs shall be made by returning the completed [[Form 74.49.2](#) or [74.49.3](#)] to the person making the request so that they receive it **at least 10 days** before the hearing date of the Application [[R.74.18\(11.2\)](#)].

Where a request for increased costs is served, the person making the request, shall, **at least 5 days** before the hearing date specified in the Notice of Application, file with the Court:

- 1) A Supplementary Application record containing:
  - a. [Form 74.49.2](#), Request for Increased Costs (Estate Trustee) or [Form 74.49.3](#), Request for Increased Costs (Person Other Than Estate Trustee)
  - b. Form 57B, Costs Outline
  - c. Affidavit of service (Form 16B) or Lawyer's Certificate of Service (Form 16B.1) regarding the [Form 74.49.2](#) or [74.49.3](#) and [57B](#)
  - d. An affidavit containing:
    - a summary of the responses to the request for increased costs received under [R.74.18\(11.2\)](#), and a list of the persons who failed to respond, and
    - the factors that contributed to the increased costs [[R.74.18 \(11.3\)](#)].

The court may grant judgment on a request for increased costs without a hearing and may order the person making the request to provide any additional information for that purpose [[R.74.18 \(11.4\)](#)].

If a hearing takes place, the Court may assess, or refer to an assessment officer, any bill of costs, account or charge of a solicitor employed by the applicant or by a person who filed a notice of objection or a request for further notice in passing of accounts [[R.74.18\(13\)](#)].

## 17.10 If the Application is opposed, does it proceed to an oral hearing?

Yes, a court hearing will be held before a Judge where the Application to Pass Accounts is opposed. This happens when Notices of Objection to Accounts ([Form 74.45](#)) have been filed and not withdrawn **at least 15 days** before the hearing date specified in the Notice of Application. Parties must attend on the hearing date and make submissions to a Judge.

The applicant shall, **at least 10 days** before the hearing date of the Application, serve a consolidation of all of the remaining objections to accounts and a Reply to Notice of Objection to Accounts [[Form 74.49.4](#)] on the following persons:

- Every person who has served and filed a notice of objection to accounts and has not withdrawn it;
- Every person who has served and filed a request for further notice in passing of accounts, and
- The Public Guardian and Trustee or Children's Lawyer, if they were served with the notice of Application and did not file a notice of non-participation in passing of accounts [[R.74.18 \(11.5\) and \(11.6\)](#)].

### i. Documents that must be Filed

If the Application to pass accounts is proceeding to an oral hearing, the applicant must file with the Court, **at least 5 days** prior to the hearing date of the Application an Application Record containing:

- 1) Notice of Application to Pass Accounts ([Form 74.44](#))
- 2) Proof of service (Affidavit of service (Form 16B) or Lawyer's Certificate of Service (Form 16B.1) or other proof authorized by rule 16.09)
- 3) Consolidation of Notices of Objection to Accounts and Reply to Notice of Objection to accounts ([Form 74.49.4](#))
- 4) Any responses to the applicant's Reply to Notice of Objection to accounts
- 5) Notices of withdrawal of objection to accounts
- 6) Notices of non-participation in passing of accounts from the Public Guardian and Trustee or Children's Lawyer, if served
- 7) Any requests for further notice in passing of accounts
- 8) Any requests for costs
- 9) Any requests for increased costs, costs outlines, and responses to requests for increased costs; and
- 10) [Form 74.51](#), a draft judgment on a contested passing of accounts [[R.74.18\(11.7\)\(14\)](#)].

### ii. Issuing Application and setting hearing date

The Notice of Application should be issued and a hearing date scheduled (see [Section 17.5](#) for the steps).

If the parties agree to all of the terms of the draft order, the applicant shall indicate that it is a joint draft order [[R.74.18\(11.8\)](#)].

If the parties fail to agree to all of the terms of the draft order, the applicant shall indicate that it is the applicant's draft order and another party may file an alternative draft order **at least 3 days** before the hearing date (or with leave of the court, at the hearing) [[R.74.18\(11.9\)](#)].

Only the objections raised in the notice of objection are to be raised at the hearing, unless the court orders otherwise [[R.74.18 \(12\)](#)].

At the hearing, the court may assess, or refer to an assessment officer, any bill of costs, account or charge of a solicitor employed by the applicant or by a person who filed a notice of objection or a request for further notice in passing of accounts [[R.74.18 \(13\)](#)].

At the hearing, the court may order that the Application or any issue proceed to trial and give directions, such as directions regarding issues to be tried, time and scope of disclosure, or direction to proceed to mediation [[R.74.18\(13.1\) and \(13.2\)](#)].

If costs being sought are greater than the amount allowed under Tariff C, the estate trustee or other person must serve on every other party to the Application a Request for Increased Costs (Estate Trustee) [[Form 74.49](#)] or Request for Increased Costs (Person Other Than Estate Trustee) [[Form 74.49.3](#)] specifying the amount of costs being sought and a Costs Outline [[Form 57B](#)] **at least 15 days** before the hearing date specified in the notice of Application [[R.74.18\(11\)](#)].

## Section 18. Fee Waivers

For the complete guide on fee waivers and processing information, please refer to the [Civil Procedures Manual](#).

While a fee waiver can be issued for estate application files, it does not waive the Estate Administration Tax that is payable pursuant to the [Estate Administration Tax Act](#). This tax is not a court fee set out under [O. Reg 293/92](#). The fee waiver, however, would allow the holder to be exempt from court fees (for example, copies, certified copies, filing objections, etc.). Fees for civil, small claims, and family court cases, including appeals, and for enforcement of a court or tribunal order, are prescribed by regulation under the [Administration of Justice Act](#).

The following guide is available to those requesting information about fee waivers for an estates proceeding: A Guide to Fee Waiver Requests ([ENG - FW-A 1/FR – FW-A 1](#)). The guide provides direction on how to complete a request for a fee waiver certificate and includes definitions for some of the terms used in the forms. You can inform clients that the Guide is also available for download on the [Ontario Court Forms website under “Court Fee Waiver Forms”](#) and that [information about fee waivers is available online at: https://www.ontario.ca/page/have-your-court-fees-waived](#)

The fee waiver applies to most fees that the court charges in civil, family and Small Claims Court cases. Section 3 of [O. Reg. 2/05](#) sets out fees for which a fee waiver does not apply:

- fees paid to Authorized Court Transcriptionists for court transcripts;
- official examiners' fees;
- fees and allowances paid to witnesses;
- fees paid to mediators for civil mandatory mediation (these fees may be waived under the Mandatory Mediation Program's Access Plan);
- fees paid to mediators in estates, trusts and substitute decisions cases;
- fees relating to criminal matters and proceedings under the [Provincial Offences Act](#); and
- disbursements to the sheriff for enforcement of orders (except for enforcement of an order made under subsection 31(3) of the [Residential Tenancies Act, 2006](#)).

In addition, a fee waiver does not apply to fees that are not payable under the [Administration of Justice Act](#), including:

- fees for bankruptcy proceedings prescribed under the [Bankruptcy and Insolvency Act](#);
- fees for service of documents, unless the documents are served by the sheriff or bailiff of the Small Claims Court;
- fees paid to mediators for family mediation services;
- costs ordered to be paid to another party;
- federal Central Registry of Divorce Proceedings fee; and
- lawyers' and paralegals' fees.



## Section 19. File and Document Management, Record Retention and Access to Court Files

### 19.1 Maintain original Wills, Applications, Affidavits and supporting documents

You must preserve all original Wills where a Certificate of Appointment was granted (s.3 [Estates Act](#)).

You must also preserve all other documents submitted as part of the probate application, including the application, affidavits and supporting documents (s.3 [Estates Act](#)).

An application which is filed with the court becomes part of the court record and it cannot be returned to a filer/applicant or replaced by the filing of a copy of the application which was first filed and later revised after it was sworn or affirmed by the applicant unless a judge orders otherwise.

Before a Certificate is granted, the application can be withdrawn or abandoned, if necessary, and a new, revised application filed.

- It is not necessary for an applicant to re-file documents which were filed in support of the first filed application if no changes to those documents are required.

For example, where errors are identified which require a new application to be sworn/affirmed, served and filed but no changes are required to the proof of death and draft certificate, it is not necessary for an applicant to resubmit the proof of death and draft certificate along with the filing of the revised (second filed) application. See Section 9.6 for more information on “Amendments to filed applications prior to issuance of a Certificate”.

Where the return of a paper-filed application and/or supporting documents (example, original Will) are requested, direct the request to a judge for consideration. The memo to the judge should:

1. reference the requirement in section 3 of the *Estates Act* for a registrar to “file and preserve” all documents used in any matter in the registrar’s court.
2. address whether:
  - a. a probate certificate was issued;
  - b. a notice of objection was filed;
  - c. a notice of application/motion challenging the Will was filed;
  - d. a judge has made an order directing the Will or other documents to remain in the court file.
3. For a request for the return of the original Will before a Certificate was granted: Indicate whether it includes a request for the return of the Affidavit that the Will is attached and marked as an exhibit to (the return of the Affidavit of Execution (Form 74D), Affidavit of Condition (Form 74E) or Affidavit Regarding a Holograph Will or Codicil (Form 74F). Do not detach the Will from the Affidavit unless a court order directs a registrar to do so.
4. For a request for the return of the original will after a Certificate was granted:



Reference in the memo judge of the requirement to retain and preserve all original wills in the court file where a certificate is granted (s. 3 of the *Estates Act*).

Direct any questions or concerns about file and document management to local management. In the event that questions or concerns cannot be resolved locally, contact your [regional Estates Technical Table representative](#).

## 19.2 Record Retention

The [Recorded Information Schedule](#) applies to estates matters in the Superior Court of Justice. The record series includes case files, indexes, orders and judgments and minute books. The Schedule applies to records stored on paper or other media (including electronic records) unless otherwise specified.

## 19.3 Access to Court Files

The [Ministry of the Attorney General's Court Services Division Policies and Procedures on Public Access to Court Files, Documents and Exhibits](#) sets out what court documents are available to the public and media and how they may access them.

Upon payment of the prescribed fee, members of the public are entitled to see any documents filed in a civil proceeding, or any judgments entered, unless a statutory provision, common law rule or court order restricts access. This includes a filed probate application, documents filed in support of an application, and/or the affidavit of execution with the original Will/Codicil attached and filed in support of a probate application.

An official copy of the whole or any part of a will or an official Certificate may be obtained from a registrar on the payment of the prescribed fee (s.27 [Estates Act](#)). See [Section 4](#) for the fees payable.

The requirements for accessing Wills on deposit for safekeeping are set out in Rule 74.02 of the *Rules of Civil Procedure*. See [Section 16](#) for information on access policies for Wills on deposit for safekeeping.

### 19.3.1 Files and Documents Under Publication Bans or Sealed

In general, when a court order imposes a publication ban, the public can still access the court file and documents. You must tell the person who is accessing the file or document that it is under a publication ban and must warn them that publication could be a violation of law. If the request for access is made at the court counter you can use the Estates System notes field to note that you explained this to the requestor, their name and date and any response received. If the request is made by email, you can explain this in a reply email.

A sealing order typically provides the date the file was sealed and the name of the judicial official who sealed the documents, but it does not disclose information about the content of the sealed documents. If such an order was made, the sealing order is accessible unless otherwise ordered

by a judicial official. However, if the sealing order contains confidential information that is under seal, judicial permission is required for access.

The Estates System allows staff to identify that a judicial official ordered an Application sealed/restricted or has imposed a publication ban. When presented with such an order, you must use the Estates System feature to record the data. The Estates System markers allow identification of whether there is a sealing, restriction or publication ban order made on the associated application each time the file is opened in the Estates System.

## Section 20. Addressing Queries and Resources

Estate court user's inquiries should be directed to the resources available on the Ontario government websites and to other resources as set out below where appropriate. You must not provide legal advice.

### 20.1 Recent estates court reforms

Inquiries about recent changes to estate court rules, forms and filing procedures can be directed to the following resources:

#### **April 1, 2024 estate court rule and form changes**

A summary of the rule and form changes introduced by [O. Reg. 388/23, in effect on April 1, 2024](#), can be found on the Ontario [Regulatory Registry](#) website.

A table comparing the old and new forms for Consents and Renunciations (new form 74G and old forms 74G and 74H) and Affidavit in support of a Holograph Will (Form 74F) and describing the form and rule changes can be found on the [CSD forms website](#).

#### **July 6, 2023 estates court rule and probate application form changes**

A table comparing the old and new forms and describing the form and rule changes can be found on the [CSD forms website](#).

A summary of the rule and form changes introduced by [O. Reg. 188/23](#) can be found on the Ontario [Regulatory Registry](#) website.

#### **January 30, 2023 Lawyer Certificate of Service**

A summary of the rule and form changes permitting lawyers to file Certificates of Service rather than Affidavits of Service can be found on the Ontario [Regulatory Registry](#) website.

#### **July 1, 2022 estate court rule and form changes**

A table comparing the old and new forms and describing the form and rule changes can be found on the [CSD forms website](#).

A summary of the rule and form changes can be found on the Ontario [Regulatory Registry](#) website.

#### **January 1, 2022 estate court rule and form changes**

A table comparing the old and new forms and describing the form and rule changes can be found on the [CSD forms website](#).

A summary of the rule and form changes can be found on the Ontario [Regulatory Registry](#) website.

#### **Electronic submission of court documents and electronic signatures**

CSD's notice regarding acceptable formats of electronic signatures on court forms and documents filed through the Civil Submissions Online and Civil Claims Online portals of Justice Services Online can be found at:

[CSD Notice on Electronic Court Documents: Electronic Signatures and Submissions through Online Filing Portals](#) (released February 2022 and updated April 2022)

## 20.2 Probate processes

### How to Apply for Probate

A CSD public guide on applying for probate under Rule 74 can be found at:  
<https://www.ontario.ca/page/apply-probate-estate>

### How to Apply for Probate of a Small Estate

A CSD public guide on applying for a probate of a small estate under Rule 74.1 is available at:  
<https://www.ontario.ca/page/probate-small-estate>

### What to do when someone dies

Information about how to get a death certificate is available on a MPBSD webpage at:  
<https://www.ontario.ca/page/what-do-when-someone-dies>

### Request for Estates Procedures Manual

The CSD Estates Procedures Manual can be requested by email to [CSDManual@ontario.ca](mailto:CSDManual@ontario.ca).

You should not provide or send a copy of the Manual to clients but rather should refer clients requesting the Manual to the email address above.

### Estate Court Forms

The estate court forms can be found on the [CSD court forms website](#).

Many of the estates forms under Rule 74 of the Rules of Civil Procedure are provided below in a fillable format. This website provides instructions on how to amend an estate court form to put an X in a check box and to add a line/row in a form.

### Request for Bilingual Proceedings

Where a French Application or French supporting documents are filed they should be sent to

- a. a French speaking Registrar (on site or within your region) for review;
- b. a French speaking Judge; or
- c. [French Language Services \(FLS\)](#)

To process requests for bilingual proceedings, follow the directions in CSD's FLS policy:  
<https://intra.ontario.ca/mag/csd-fls-page-9>

## 20.3 Estate administration, estate planning, making a Will and Power of Attorney

### How to Administer an Estate

A MAG webpage on administering estates (after a probate certificate is issued or pursuant to a Will) can be found at:

<https://www.ontario.ca/page/administering-estates>

### Estate Planning, Wills and Powers of Attorney

Information on estate planning, how to make a will and powers of attorney can be found on Ontario government webpages (created by MAG, MPBSD and MSA) at:

<https://www.ontario.ca/page/estate-planning-and-wills#s>

<https://www.ontario.ca/page/make-power-attorney>

<https://www.ontario.ca/page/seniors-plan-for-the-future>

<https://www.ontario.ca/page/what-do-when-someone-dies>

## 20.4 Locating a court, a will, a lawyer or probate court records

### Locating an estates court office

Estates court locations can be found by using the MAG online court locator at:

<https://www.ontario.ca/locations/courts>.

### Locating a Will

Guidance on how to locate a Will is available on the Law Society's website at:

<https://lso.ca/public-resources/trustee-services-and-the-unclaimed-trust-fund>

### Locating Probate Court records filed between 1793 and 1970

Information about locating old (1793-1970) probate court records can be found on a MPBSD webpage at: [http://www.archives.gov.on.ca/en/microfilm/c\\_efile.aspx](http://www.archives.gov.on.ca/en/microfilm/c_efile.aspx)

### Finding a Lawyer

Information about how to find a lawyer is available on the Law Society's website at:

<https://www.ontario.ca/page/find-lawyer-or-paralegal>

<https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/law-society-referral-service>

### Public Access to Court Files

A CSD guide to accessing court files, documents and exhibits is available at:

<https://www.ontario.ca/document/access-court-files-documents-and-exhibits>

## 20.5 Estate administration tax

### **Estate Administration Tax**

Information about the Estate Administration Tax scheme and a tax calculator can be found on a Ministry of Finance webpage at:

<https://www.ontario.ca/page/estate-administration-tax>

### **Estate Information Return**

Information about the Estate Information Return can be found on a Ministry of Finance webpage at:

[Ontario Central Forms Repository - Form Identification \(gov.on.ca\)](https://www.ontario.ca/page/estate-administration-tax)

<https://www.ontario.ca/page/estate-administration-tax>

## 20.6 Court Fees

### **Court document filing fees, commissioning fees and file inspection and copy fees**

<https://www.ontario.ca/page/civil-court-fees>

### **Eligibility to request a waiver of an estate court fee**

<https://www.ontario.ca/page/have-your-court-fees-waived>

## 20.7 Office of the Children's Lawyer, Public Guardian and Trustee and paying money into and out of court

### **Office of the Children's Lawyer**

<https://www.ontario.ca/page/office-public-guardian-and-trustee>

### **Public Guardian and Trustee**

<https://www.ontario.ca/page/office-childrens-lawyer-and-estates-and-trusts-matters>

### **Paying money into, and out of, court**

<https://www.ontario.ca/page/paying-money-and-out-court>

## 20.8 Authentication of documents for use outside of Canada

Information about how to get a document issued by the Ontario government or an Ontario notary or commissioner authenticated for use outside of Canada can be found at:

<https://www.ontario.ca/page/authenticate-document-use-outside-canada>

Eligible documents that can be authenticated by Official Document Services (MGCS) include an Ontario notary public's notarized copy of a Certificate of Appointment of Estate Trustee or a death certificate issued by Ontario government.

## 20.9 Model orders giving directions and Toronto Estates List forms

The Toronto Superior Court of Justice has published model orders for proceedings involving will challenges, passing of accounts, dependant's support, power of attorney/guardianship disputes, appointment of section 3 counsel.

The Toronto Superior Court of Justice Estates List forms (request for urgent motion, hearing request and pre-trial confirmation form) can be found [here](#).

## Appendix A

### Summary of Manual Amendments

Revisions were made to the following sections of this manual on **February 6, 2024**:

- **Manual title changed to include the word “Court Staff” before “Estates Procedures Manual”**
  - Clarifies that the manual is written for SCJ estate court staff (which continues to be noted on page 2).
  
- **Section 1.5 - How can an estate beneficiary respond to a probate Application?**
  - Indicates new Form 74G (Renunciation and Consent) dated November 1, 2023 can be filed immediately instead of Form 74G and Form 74H dated September 1, 2021. Form 74G and Form 74H dated September 1, 2021 will be accepted until April 1, 2024. The manual will be updated in April to remove references to the old Form 74G and Form 74H.
  - On December 14, 2023, a [Notice](#) was posted on CSD’s Ontario Court Forms website regarding the deadlines for filing Form 74G and Form 74H, and the acceptance of the new Form 74G dated November 1, 2023 as December 14, 2023.
  
- **Section 3.2 – Jurisdiction**
  - clarify process for transferring a probate application and other estate applications to another court location. Updates made to Sections 3.2.1, Table 4, and a new Section 3.2.1.1.
  
- **Section 3.3.3 – How should an “Action Required” alert be addressed?**
  - direction regarding the new Estates System enhancement that will detect duplicate applications at an early stage (pre-clearance search). Explains that registrar’s notice should be sent to advise that a prior probate application was filed.
  
- **Section 3.4 Assigning a court file number**
  - clarifies that a court file number should be assigned to an application unless Directive 2022/08 or this manual authorize the refusal of the application.
  
- **Section 5.1.1 - Is the Application for a Certificate of Appointment of Estate Trustee with or without a Will? and Section 5.2.1 - Is the Application for a Small Estate Certificate?**
  - removes references to allowing the filing of February 2022 versions of Form 74A and 74.1A (this is no longer permitted pursuant to O. Reg. 188/23, the transition period to file the old versions of the forms expired on November 3, 2023).



- explains that the new Form 74F, Affidavit in support of a holograph will can be filed starting on December 14, 2023 and the old version of the form (September 2021) can be filed until April 1, 2024.
- **Section 5.4.1 - Is the Application for an Amended Small Estate Certificate?**
  - clarifies that only the estate trustee named in the Small Estate Certificate may make an Application to Amend a Small Estate Certificate or Application for a Certificate of Appointment of Estate Trustee (pursuant to rules 74.1.05 (1) and 74.1.06 (1)).
  - clarifies that staff should have access to the originating file for which the Small Estate Certificate was issued and determine whether any bond issues were addressed or orders made to defer the EAT.
  - new internal link to staff video tutorial for instructions on inputting information about an Application to Amend Small Estate Certificate in the Estates System.
- **Section 5.5 - Applications filed by email**
  - In new sections 5.5.1 to 5.5.6, inserted the existing direction contained in the CSD email filing guide for probate applications to eliminate the need to access that resource for guidance on processing applications and responding documents filed by email.
- **Section 6.1.1 - Is the applicant applying without a will or applying with a will but is not named in the will as an estate trustee or alternate estate trustee?**
  - explains that applicants who are not a resident in Ontario and are applying without a Will or with a Will but the person is not named in the Will as estate trustee may seek an order pursuant to section 29 of the Estates Act.
  - adjusted formatting to make the section easier to read.
- **Section 6.2.4 - Was a request to dispense with bond requirement or reduce bond amount made on consent or a motion filed?**
  - explains that new form 74G may be filed for consents (dated November 1, 2023).
  - clarifies that Rule 37 Motions may be filed before, after or together with a probate application and the steps that should be taken when a Rule 37 motion is filed.
- **Section 6.5 – Validity of the Will and Section 6.5.2.6 – Holograph Will**
  - new content regarding new Form 74F Affidavit regarding a holograph Will.
- **Section 7 – Estates Court Records Search**
  - expanded direction on using the Estates System to conduct estates court records searches for probate applications with screen shots.

- **Section 8.2.2 – How is every Certificate issued and Section 8.4.2 – How is a Certificate issued manually.**
  - directs full name of registrar to be printed/stamped beneath their signature on a manually issued certificate and indicates that a copy of the issued Certificate must be placed in the court file.
  - expanded direction on using the Estates System to record the issuance of a certificate with screen shots (new Section 8.2.2.1).
  
- **Section 8.3.2 - How is a Certificate issued electronically?**
  - Inserts internal links to GOVTechOn’s Guide to Managing Digital Signatures in Adobe Acrobat and Reader DC and the How to Create and Apply Digital Signatures and Court Seals to Documents Guide. for guidance on electronic issuance of court documents.
  
- **Section 9.5 – What circumstances do not require a Registrar’s Notice?**
  - changes format of the content to table form to improve readability (Table 12 created and includes existing content on circumstances which do not require a Registrar’s Notice).
  - explains that where a part of new Form 74G dated November 1, 2023 (Parts A Renunciation and Part B Consent) was unnecessarily completed (individual does not have a right to act as estate trustee or is not an estate beneficiary), the non-applicable part of the form should be disregarded.
  - explains that form 74G and 74H dated September 1, 2021 can be filed until April 1, 2024.
  
- **Section 13 - Exemplification Certificate, Certificate of Grant, Certificate of Official Document, Certified Copies and Apostille Certificate**
  - new Section 13.5 explains processing requests for authenticating a document for use outside of Canada and the Hague Apostille Convention which applies in Canada as of January 11, 2024.
  
- **Section 14.10 - Issuance of Certificate of Appointment of Estate Trustee During Litigation**
  - clarifies that in a case where the Estates System records search indicates “not clear” staff should review the civil litigation file to determine whether the document identified in the estate court records search is related to the action pending for which the trustee during litigation is being appointed.
  - explains that a copy of the an issued order should be filed and that legal professionals may use sample SCJ orders to seek an order appointing an estate trustee during litigation.

- **Section 19.3 – Access to Court File**
  - inserts link to CSD’s policy on access to court documents.
  - directs that filed probate applications, supporting documents, and the original Will/Codicil filed in support of an application may be viewed and copied, unless there is an order or legislation prohibiting it, where the applicable fee is paid.
  
- **Section 20.1 – Estate Court rule and form changes**
  - inserts reference to O. Reg. 388/23, filed on December 14, 2023 and in effect on April 1, 2024, which amends Consents and Renunciation Forms (new Form 74G replaces 74G and 74H) and Affidavit in support of holograph will (Form 74F) and provides link to detailed summary of the changes on the CSD court forms website.
  
- **Section 20.9 – Model orders and Toronto Estates List forms**
  - new Section for SCJ Toronto resources on model orders and Estates List forms.