

APPLYING FOR PROBATE APPLICATION (ESTATE TRANSACTION)

METHOD OF APPLICATION: *(Please circle the appropriate answer)*

WITH A WILL

WITHOUT A WILL

Please be prepared to provide the following documents:

1. Original Last Known Will and Testament of the deceased
2. Affidavit of Execution of Will or Codicil
3. Original Death Certificate of the deceased***
4. Any bank statements, investment statements, vehicle statements and/or house/cottage appraisals***

These will be used to calculate the probate amount.

***** Please note, if you have circled "WITHOUT A WILL", you only require 3 and 4 from the list. *****

INFORMATION OF THE DECEASED

Complete Full Name: _____

Complete last known address:

Birth Date: _____ Death Date: _____

Place of Death: _____

Marital Status: *(Please circle the appropriate answer)*

MARRIED

WIDOW

DIVORCED

SINGLE

Last known occupation: _____

***** Please note; if the deceased was retired, simply note the last known occupation prior to retirement.*****

Are you a previous client? YES NO
(Please circle the appropriate answer)

If yes, please list the type of transaction: _____

INFORMATION ON THE APPLICANT(S)

Complete Full Name: _____

Complete address:

City: _____ Province: _____

Postal Code: _____

Occupation: _____

Home Phone: _____ Cell Phone: _____

Email Address: _____

ADDITIONAL APPLICANTS:

Complete Full Name: _____

Complete address:

City: _____ Province: _____

Postal Code: _____

Occupation: _____

Home Phone: _____ Cell Phone: _____

Email Address: _____

****** ADDITIONAL PAGE WILL BE PROVIDED IF MORE APPLICANTS ARE INVOLVED******

WHO HAS THE RIGHT TO APPLY FOR THE CERTIFICATE OF APPOINTMENT OF ESTATE TRUSTEE WITHOUT A WILL

- The applicant must reside in Ontario.
- **A certificate of appointment will not be issued to a non-resident.**
- The order of preference for persons to apply to be appointed as the estate trustee where there is no will is set out in s. 29 of the Estates Act.
- The legal status of individuals born within marriage or outside of marriage is identical. At present, the order is as follows:
- married spouse of the deceased or a person living in a conjugal relationship with the deceased immediately before death
- children of the deceased
- grandchildren of the deceased if no child is living
- great-grandchildren of the deceased if no child or grandchild is living, and so on if there is a lineal descent (*descendants are preferred over ascendants even when the latter are closer in relationship*)
- the father or mother of the deceased who leaves no issue
- the brothers or sisters of the deceased who dies without issue or parents
- the grandparent(s) of the deceased who dies without issue, parents or siblings
- the uncles, aunts, nephews, nieces and great-grandparents of the deceased who dies without issue, parents or siblings
- collateral relatives of more remote degrees, those of equal degree having an equal right
- where there are no next of kin in Ontario, the Public Guardian and Trustee.
- An individual with a prior right to apply as against the applicant must renounce (*Form 74.18*) before the court will grant the certificate to the applicant.
- If there are several persons standing in the same degree of kinship, the court will typically act in its discretion and appoint one or more of those persons based on the court's view of the interests of the estate.
- The persons entitled to apply for the certificate may consent to the appointment of another person or a trust company (*Form 74.19*).
- The certificate may be issued to a creditor of the deceased where there is no next of kin in Ontario willing or able to make the application. This would permit the creditor to collect the deceased's debts but obligates the creditor to administer the estate.

Reference: <https://lso.ca/lawyers/practice-supports-and-resources/practice-area/estates-and-trusts/how-to-prepare-an-application-for-a-certificate-of>

ESTATE ADMINISTRATION TAX - MINISTER OF FINANCE

The fees are based on the value of the estate and are calculated in accordance with s. 2(6) of the Estate Administration Tax Act, 1998. Note: amendments to the Estate Administration Tax Act 1998, received Royal Assent on May 12, 2011. There is no set date yet, as to when these amendments will come into force. Before calculating estate administration tax, applicants should ensure they are relying on the most up-to-date legislation.

The fees are calculated based on the value of the deceased's assets in his or her name alone and does not include assets that pass outside of the estate or outside of probate.

Reference: <https://lso.ca/lawyers/practice-supports-and-resources/practice-area/estates-and-trusts/how-to-prepare-an-application-for-a-certificate-of>

During your consultation, the lawyer will provide you with the amount required to be paid to the Minister of Finance for your probate application.