

Trustee Documents Required for Application for Certificate of Appointment Checklist (with Will)

Updated on: 10/31/2019

Rule [74.04](#)(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (“Rules”)

[Application for Certificate of Appointment of Estate Trustee with a Will \(Individual Applicant\) \(Form 74.4\)](#)

TIPS — Information **required** to complete Form 74.4 is as follows:

Court:

- The **application** must be filed in the court in Ontario where the deceased had his or her permanent residence.

Applicant information:

- the applicant is the prospective estate **trustee**; and
- the applicant’s name and address must be indicated at the top of the **application** and his or her name, address and occupation must be indicated at the end of the **application** in the affidavit.

Deceased information:

- name, given name and any other names by which the deceased was known;
- last known address or municipality in which he or she owned property in Ontario;
- place of death, date of death, date of last **will**;
- whether deceased was over 18 at time of death;
- date of codicils;
- marital status;
- whether deceased married after date of **will**;
- whether marriage of deceased was terminated by divorce, or declared null, after date of **will**; and
- whether any person (or their spouse) who signed the **will** or codicil as witness is a beneficiary under the **will**.

Value of Assets of Estate:

- indicate the total value of all assets that belonged to the deceased at time of death, net of encumbrances;
- exclude any assets that do not form part of the estate, such as jointly held assets passing to a survivor under rules of

Trustee Documents Required for Application for Certificate of Appointment Checklist (with Will)

survivorship and proceeds of life insurance policies payable to named beneficiaries (see practice note: [Estate Assets vs. Non-Estate Assets](#));

- if the full value of the estate cannot be ascertained at the time of the **application**, the applicant must provide an undertaking to report the full value of the estate, once ascertained, and remit the appropriate estate administration tax within 6 months; and

- when the actual value of the estate is known, the applicant for estate **trustee** must file an affidavit with the court setting out its true value and remit the appropriate estate administration tax.

More information about the applicant:

- indicate whether any person entitled to an interest in the estate is not an applicant;
- indicate why a person named in the **will** as estate **trustee** is not an applicant (see form: [Renunciation of Right to a Certificate of Appointment of Estate Trustee \(or Succeeding Estate Trustee\) with a Will \(Form 74.11\)](#) below);
- if the applicant is not named in the **will** as estate **trustee**, explain why he or she is entitled to apply (see form: [Consent to Applicant's Appointment as Estate Trustee with a Will \(Form 74.12\)](#) below); and
- if an applicant is the spouse of the deceased, have they elected to receive the entitlement under the *Family Law Act*, R.S.O. 1990, c. F.3?

Affidavit of Applicant(s):

- Each applicant must swear, before a lawyer as notary public or a commissioner for oaths, that the information contained in the **application** is true.

Rule [74.04](#)(1)(a)The **original will** and any **codicil**.**TIPS:**

- The original **will** and any accompanying codicils must contain an attestation (typically written on the back of the last page of the **will** or codicils) sworn by the person who administered the oath in Form 74.4.

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This is a sample of the appropriate attestation:

This is Exhibit "A" to the affidavit of

Trustee Documents Required for Application for Certificate of Appointment Checklist (with Will)

[name of applicant], *sworn before me this* [date on which applicant swears the affidavit at the end of Form 74.4].

Rule [74.04](#)(1)(a.1)

Proof of death

TIP: On January 1, 2016, r. [74.04](#)(1) was amended to **require** a **document** evidencing a person's death. The following **documents** are acceptable:

- a death **certificate** issued by the Registrar General;
- a funeral director's proof of death **certificate**; or
- an order made under the *Declarations of Death Act, 2002*, S.O. 2002, c. 14, Sched., declaring that the person has died.

Rule [74.04](#)(1)(b)

[Affidavit of Service of Notice \(Form 74.6\)](#), with a copy of the [Notice of an Application for a Certificate of Appointment of Estate Trustee with a Will \(Form 74.7\)](#)

TIPS:

- Prior to submitting the **application**, the applicant must serve or cause to be served, Form 74.7 on "all persons entitled to share in the distribution of the estate, including charities and contingent beneficiaries" (Rules, r. [74.04](#)(2)).
- Form 74.6 must be sworn/affirmed by the applicant(s) and witnessed by a commissioner.

[Notice of an Application for a Certificate of Appointment of Estate Trustee with a Will \(Form 74.7\)](#)

- A copy of Form 74.7 must be submitted with the **application** and marked as Exhibit "A" to the affidavit. An example of the appropriate wording for this exhibit would be:

This is Exhibit "A" to the affidavit of
[name of applicant], *sworn before me this* [date on which applicant swears the affidavit at the end of Form 74.6].

- Form 74.7 **requires** a breakdown of the various types of beneficiaries. Paragraph 4: underage beneficiaries; paragraph 5: mentally incapable beneficiaries with an attorney under a power of attorney; paragraph 6: mentally incapable beneficiaries without an attorney under a power of attorney; paragraph 7: unborn or unascertained beneficiaries; and paragraph 8: remaining beneficiaries, including adults of sound mind and charities.
- Each notice that is served must be

Trustee Documents Required for Application for Certificate of Appointment Checklist (with Will)

accompanied by a copy of the **will** or the relevant excerpt from the **will** setting out the gift to each particular beneficiary.

Rule [74.04](#)(1)(c)

[Affidavit of Execution of Will or Codicil \(Form 74.8\)](#)

TIPS:

- affidavit is to be completed by one of the witnesses who saw the **will** signed by the testator; and
- if both of the witnesses are deceased or neither can be located, the applicant must provide “such other evidence of due execution as the court may **require**” (Rules, r. [74.04](#)(1)(c)(ii)). Typically, an affidavit from an individual familiar with the testator, and one who can attest that the signature on the **will** is that of the deceased, **will** be acceptable.

[Affidavit of Condition of Will or Codicil \(Form 74.10\)](#)

TIPS:

- Affidavit must be included with the **application** if the **will** is not a holograph **will** and has written markings on it that are not initialed. It is sworn by a witness to the **will** and proves to the court that the alteration was part of the **will** when it was signed.
- If both of the witnesses are deceased or neither can be located, the applicant must provide “such other evidence of due execution as the court may **require**” (Rules, r. [74.04](#)(1)(c)(ii)). Typically, an affidavit from an individual familiar with the testator and one who can attest that the signature on the **will** is that of the deceased, **will** be acceptable.

Rule [74.04](#)(1)(d)

[Affidavit Attesting to the Handwriting and Signature of a Holograph Will or Codicil \(Form 74.9\)](#)

TIPS:

- If the **will** or codicil is in holograph form, rather than in Form 74.8, Form 74.9 must be included in the **application** to attest that the handwriting and signature in the **will** or codicil are those of the deceased.
- This form is sworn by someone who is familiar with the testator’s handwriting (not necessarily the applicant).

Rule [74.04](#)(1)(f)

[Renunciation of Right to a Certificate of Appointment of Estate Trustee \(or Succeeding Estate Trustee\) with a Will \(Form 74.11\)](#)

TIPS:

- If a living person named as estate **trustee** in the **will**, or any living person in priority to or equal in priority to the applicant, is not applying, indicate that they have signed a renunciation and file

Trustee Documents Required for Application for Certificate of Appointment Checklist (with Will)

the Renunciation with the **application** (see form: [Renunciation of Prior Right to a Certificate of Appointment of Estate Trustee without a Will \(Form 74.18\)](#)).

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If the person named as estate **trustee** refuses or is unable to sign, the applicant may seek an order to accept or refuse **appointment** (see practice note: [Estate Trustee Removal](#)).

Rule [74.04](#)(1)(g)

[Consent to Applicant's Appointment as Estate Trustee with a Will \(Form 74.12\)](#)

TIPS:

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If the applicant is not named as estate **trustee** in the **will**, the applicant must, along with any renunciations from living persons appointed but not acting, file consents of the beneficiaries to the applicant's **appointments** (Form 74.12).

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The persons consenting must represent a majority interest in the deceased's estate as of the date of death (Rules, r. [74.04](#)(1)(g)).

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The consent contains a line, which may be deleted if inapplicable, in which the signatory consents to an order dispensing with the filing of an administration bond. This line is included because, if one of the applicants is not named in the **will** as an estate **trustee** or if one of the applicants is not a resident of Canada, an administration bond may be **required**. It is, however, possible to apply for an order dispensing with the requirement to file a bond.

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If the **application** is for a **certificate** of **appointment** of estate **trustee** with a **will** limited to the assets referred to in the **will**, a draft order in the Form 74.13.2 ([Order for a Certificate of Appointment of \(Succeeding\) Estate Trustee with a Will Limited to the Assets Referred to in the Will \(Form 74.13.2\)](#)) is **required** to grant the **certificate** of **appointment** (Rules, r. [74.04](#)(1)(g.1)).

Rule [74.04](#)(1)(h); and Rule [74.11](#)

[Bond — Insurance or Guarantee Company \(Form 74.32\)](#)

TIPS:

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If all the applicants for the **certificate** of **appointment** of estate **trustee** with a **will** are normally resident outside of Canada, a bond of indemnity must be submitted along with the **application**. The bond is not **required** if the court agrees, on **application**, to waive the bond.

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A bond is typically obtained from an insurance or guarantee company and has a net value equal to the value of the assets of the estate.

Trustee Documents Required for Application for Certificate of Appointment Checklist (with Will)

	<ul style="list-style-type: none"> • 	<p>The bond may also be from a personal surety (see form: Bond — Personal Sureties (Form 74.33)), in which case it has a value of at least double the value of the assets in the estate. More commonly than one personal surety, there will be two personal sureties, each of whom posts a bond with a net value at least equal to the value of the assets in the estate.</p>
<p>Rule 74.04(8)</p>	<p>Certificate of Appointment of Estate Trustee with a Will (Form 74.13)</p> <p>TIPS:</p> <ul style="list-style-type: none"> • • • 	<p>This document is to be submitted along with the application. If the application is granted, it will be signed by a judge or the court registrar and sealed.</p> <p>The certificate has a back page and the draft is usually submitted as a single piece of 11 x 17 inch paper.</p> <p>A second copy of the draft form should be submitted for the court's records.</p>
<p>Rule 74.04(1)(i)</p>	<p>Such other material as the court directs</p>	
<p>IMPORTANT</p>	<p>Estate Information Return (9955E)</p> <ul style="list-style-type: none"> • 	<p>The initial Estate Information Return must be received by the Ministry of Finance within 90 calendar days following the issuance of the Certificate of Appointment of Estate Trustee. If any due date falls on a weekend or a holiday, the due date is extended to the next business day.</p>