

Deceased person without a will

IMPORTANT: The general legal information in this sheet is intended to indicate what happens when a person dies without a will. **It is not intended to provide legal advice or to replace legal advice given by a lawyer.**

WILL CONCEPT

A **will** is a legal document in which a person sets out how their property will be distributed after their death. When a person dies, their property is distributed, when applicable, according to the instructions set out in their will, after funeral expenses and other debts of the deceased have been paid.

In Ontario, it is **not mandatory** to have a will but having one allows a person to designate beneficiaries and facilitates the administration of the estate.

ESTATE WITHOUT A WILL

Distribution of property

In Ontario, the law provides for a different distribution of property depending on whether the person was married, had one or more children, or other family members.

The married person first receives a **preferential share** of the estate valued at \$ **350,000** (\$**200,000** before **March 1, 2021**). The rest of the estate, called the **residue**, is then divided between the spouse and the children.

For example: Marie leaves an estate worth \$**400,000** to her husband Lorenzo and her daughter Anna. Lorenzo first receives the preferential share of \$**350,000**. The remaining \$**50,000** is divided equally between Lorenzo and Anna, i.e., \$**25,000** each. Lorenzo therefore inherits a total of \$**375,000** and Anna receives \$**25,000**.

Beneficiary: the person who inherits the assets of the estate.

Deceased: a person who has died.

Common-law partner: is an unmarried person who lives with the deceased in a conjugal relationship continuously for at least **three years**, or less than three years if the couple has a child together.

Estate: all property belonging to a person (e.g., house, insurance policies, personal property, investments, pension plan) that will be distributed among the beneficiaries after their death.

Estate trustee: a person designated by the court, who ensures the proper management and distribution of the assets of the estate.

A **common-law partner** and **non-adopted children** do not automatically inherit from the estate, but they may apply to the court for dependant support. A **dependant** is a person for whom the deceased was financially responsible or legally obligated to provide support during their lifetime.

The law provides for the distribution of property in the following situations:

Scenarios	Distribution of property
Married, no children	The spouse receives the entire estate
Married, with children	<p>Before March 1, 2021: spouse's preferential share: \$200,000, with the remainder shared with the child</p> <p>Since March 1, 2021: preferential share: \$350,000, with the remainder shared with the child</p>
Married, with multiple children	If the death occurred on or after March 1, 2021 , and the estate is worth \$350,000 or less, the entire estate goes to the spouse. If it exceeds \$350,000 , the first \$350,000 goes to the married person and the remainder is divided between the spouse and the children
Not married, with children	The estate is divided equally among the children, as a common-law partner has no right to the estate
Not married, no children	<p>The estate is divided equally among other family members according to the following order of priority:</p> <ol style="list-style-type: none"> 1. Parents 2. Siblings 3. Nieces and nephews 4. Grandparents 5. Aunts and uncles 6. Cousins 7. The State

Who is responsible for the distribution of the estate?

The estate trustee is the person appointed by the court to distribute the estate.

No one is appointed as estate trustee when there is no will. A person who wishes to be appointed as estate trustee must prepare an application and apply to the court for the appointment. This procedure is called “**Application for a Certificate of Appointment of Estate Trustee**” (the Application).

The **Certificate of Appointment of Estate Trustee without a will** is a document issued by the court after filing the Application that proves that the person has the authority to administer the deceased's estate.

APPLICATION TO THE COURT

CERTIFICATE OF APPOINTMENT OF ESTATE TRUSTEE

Before preparing an application, make sure that no will exists by searching all safe deposit boxes of the deceased, their home, their lawyer's office, or any trust company they did business with.

If you can't find a will, you can publish a **notice** in local newspapers and/or newspapers intended for lawyers asking whether anyone is aware of the existence of a will and conduct a search with the estates registrar at the courthouse to confirm that no will has been filed with the court.

Who can file the application?

Only people who are residents of Ontario can make the application in order of priority

1. married or common-law partner
2. Children
3. Grandchildren
4. Great-grandchildren
5. parents
6. Siblings
7. Grandparents
8. Uncles and aunts
9. Cousins
10. Office of the Public Guardian and Trustee, if the deceased has no relatives in Ontario.

What if the applicant is not first in the order of priority?

If the person wishing to file the application is not first in the order of priority, those with priority must renounce their right to be appointed as estate trustee by signing **form 74 G: Renunciation and Consent** so that a person can file an application with the court to be appointed as an estate trustee in their place.

For estates valued at **\$150,000 or less**, follow the procedure of [probate of a small estate](#) to obtain the certificate. And for estates worth **more than \$150,000**, [apply for probate of an estate](#).

What happens after the certificate is issued?

Once the Certificate of Appointment is issued, the estate trustee can administer the estate, including settling debts, filing the deceased's income tax return, distributing assets according to the wishes set out in the will, and preparing a final report, etc.

The beneficiaries do not have an automatic right to immediate distribution; the estate trustee must comply with legal and tax timelines.

The **Legal Information Centre of Ontario** offers free confidential legal information and referral services in English and French to anyone with a legal problem who is located in Ontario. **Book an appointment [online](#) or call us at 1 (844) 343-7462** (toll-free) for a 30-minute legal information meeting.



Ministère de la Justice
Canada

Department of Justice
Canada



**The Law
Foundation
of Ontario**
Advancing access to justice