

CHECKLIST FOR APPLICATION FOR A CERTIFICATE OF APPOINTMENT OF ESTATE TRUSTEE WITHOUT A WILL

CERTIFICATE OF APPOINTMENT OF ESTATE TRUSTEE WITHOUT A WILL (CAETWW)	
Yes/No	APPLICATION FORM – Ensure correct prescribed form 74.14/74.15 http://ontariocourtforms.on.ca/en/rules-of-civil-procedure-forms/pre-formatted-fillable-estates-forms/
Yes <input type="checkbox"/> No <input type="checkbox"/>	IS THE ADDRESS OF THE COURT CORRECT? <i>Check where the application is being filed – e.g. at Toronto or at Brampton</i>
Yes <input type="checkbox"/> No <input type="checkbox"/>	IS THE FILER INFORMATION COMPLETE? <i>This application filed by: This should be either the law firm contact details or an individual’s contact information if filing on his/her (i.e. unrepresented) own behalf; this should include a valid email address as required for communication with the Court</i>
Yes <input type="checkbox"/> No <input type="checkbox"/>	NAME OF DECEASED IS CONSISTENT? <i>Name should be the same on Death Certificate, Will, Affidavit of Execution, Application, Certificate, Affidavit of Service and Notice of Application</i> <i>If the deceased’s name is spelled differently on the proof of death documents, the application materials must include the different spelling as an “also known as” name</i> <i>Names should be consistent on all documents filed and include a.k.a’s</i>
Yes <input type="checkbox"/> No <input type="checkbox"/>	DATE OF BIRTH IS CONSISTENT WITH DATE OF BIRTH ON PROOF OF DEATH CERTIFICATE? <i>Check for consistency</i>
Yes <input type="checkbox"/> No <input type="checkbox"/>	ADDRESS OF DECEASED IS IN THE CORRECT COURT JURISDICTION? <i>Address to include the full postal address with postal code</i>
Yes <input type="checkbox"/> No <input type="checkbox"/>	DID THE DECEASED HAVE A FIXED PLACE OF ABODE IN ONTARIO OR PROPERTY IN ONTARIO? <i>If deceased did not live in Ontario but had property in Ontario, application to be filed in the Jurisdiction of the property. Leave blank if not applicable</i>
Yes <input type="checkbox"/> No <input type="checkbox"/>	IS THE MUNICIPALITY OF THE DECEASED’S ADDRESS COMPLETE? e.g. <i>If Toronto, insert “City of Toronto” in the Municipality section of the application</i> <i>If Mississauga, insert “Regional Municipality of Peel”</i>
Yes <input type="checkbox"/> No <input type="checkbox"/>	LAST OCCUPATION OF DECEASED AND THE APPLICANT(S) MUST BE LISTED? <i>Be consistent with the Certificate</i> NOTE: <i>if using “Retired” – must be expanded to state “retired teacher/retired accountant” etc.</i>

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Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS THE CITY & MUNICIPALITY COMPLETED FOR THE PLACE OF DEATH? <i>e.g. – Toronto, in the Province of Ontario; or Mississauga, in the Regional Municipality of Peel - PLEASE NOTE: The Regional Municipality of Hamilton-Wentworth was changed in 2001 to City of Hamilton</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS THE DATE OF DEATH CONSISTENT ON ALL DOCUMENTS WITH THE PROOF OF DEATH CERTIFICATE? <i>Proof of Death Certificate must be filed and must be original or certified/notarial copies Check for consistency - Check certificate, notice of application and renunciation/consents if applicable</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS THE MARITAL STATUS CONFIRMED?</p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>WAS THE DECEASED LEGALLY MARRIED? <i>If yes, attach a schedule setting out the following:</i></p> <ul style="list-style-type: none"> • <i>Name and current address of the deceased's spouse and of each former spouse.</i> • <i>Whether any of the marriages was terminated and, if so, the method of termination of each marriage (that is, by divorce, by death or by declaration of nullity)</i> • <i>Name and address of each child of each of the marriages</i> • <i>Name of each child who died before the deceased and the name and address of any issue of that deceased child</i>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>WAS THE DECEASED PERSON LIVING IN A CONJUGAL RELATIONSHIP OUTSIDE OF MARRIAGE? <i>If "yes", attach schedule setting out details, including the address for the individual.</i></p> <p><i>The spouse or person with whom the deceased was living in a conjugal relationship outside marriage usually has the first right to apply, then next-of-kin [s. 29(1), Estates Act].</i></p> <p><i>The next-of-kin in an intestacy (called heirs-at-law) are determined by the rules of intestate succession [ss. 44-49 Succession Law Reform Act].</i></p> <p><i>The person with whom the deceased was living in a conjugal relationship outside marriage may be an applicant for an appointment as estate trustee but has no right of entitlement to share in a distribution of the estate and a bond must be addressed.</i></p>

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Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>ARE ALL THE PERSONS ENTITLED TO SHARE IN THE ESTATE LISTED WITH THE RELATIONSHIP TO THE DECEASED?</p> <p><i>All names must be listed showing relationship to the deceased. If a person entitled to share in the estate is not a spouse, child, parent, brother or sister of the deceased person, show how the relationship is traced.</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>VERIFY THAT THE TOTAL VALUE OF ASSETS AND TAXES ARE CORRECT?</p> <p><i>Note: The Estate Taxes are calculated on the value of the estate and is rounded up to the next thousand. E.g. if the value of the estate is \$125,395.25 the taxes are calculated on \$126,000.00 – see website on how to calculate the Estate Administration Taxes: https://www.attorneygeneral.jus.gov.on.ca/english/estates/calculate.php</i></p> <p><i>Effective January 1, 2020, the Ontario government provided some small relief to Estates by amending the Estate Administration Tax Act, and removing the tax payable on the first \$50,000 of the value of Estate assets reported on an Application for Certificate of Appointment. Therefore, any Estate (for which an Application for Certificate of Appointment is required), where the value of the Estate is \$50,000 or less, will no longer have to pay any EAT. For all other Estates where the value of the Estate is over \$50,000, no tax will be calculated on the first \$50,000 but the tax remains at 1.5% for the value of assets reported over \$50,000</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS THE APPLICANT’S RIGHT TO APPLY COMPLETED?</p> <p><i>Were renunciations obtained from anyone who had a prior right to apply?</i></p> <p><i>E.g. spouse of the deceased; children of the deceased; person applying with the consent of the beneficiaries; person with prior right to apply has renounced</i></p>
NOTE:	<p>IS THE APPLICANT A RESIDENT OF ONTARIO?</p> <p><i>MUST BE AN ONTARIO RESIDENT TO APPLY FOR A CERTIFICATE OF APPOINTMENT WITHOUT A WILL UNLESS ORDERED OTHERWISE</i></p>

Yes/No AFFIDAVIT OF SERVICE WITH NOTICE OF APPLICATION – Ensure correct prescribed form 74.16 and 74.17 attached as an exhibit

Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS THE NAME OF THE DECEASED (INCLUDING AKA’S) AND DECEASED’S DATE OF DEATH, CORRECT ON THE AFFIDAVIT OF SERVICE AND NOTICE OF APPLICATION AND CONSISTENT WITH THE APPLICATION?</p> <p><i>Ensure names are consistent</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS THE APPLICANT’S(S) NAME (INCLUDING AKA’S) ON THE AFFIDAVIT AND NAME AND ADDRESS ON THE NOTICE OF APPLICATION CONSISTENT WITH THE APPLICATION?</p> <p><i>Ensure names are consistent</i></p>

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Yes <input type="checkbox"/> No <input type="checkbox"/>	ARE THERE MINOR BENEFICIARIES? <i>If yes, list the names, dates of birth, name and address of parent or guardian and estimated value of their share in the estate; if NO – state N/A</i>
Yes <input type="checkbox"/> No <input type="checkbox"/>	ARE ALL THE QUESTIONS ANSWERED ON THE NOTICE OF APPLICATION? <i>Where not applicable, state N/A</i>
Yes <input type="checkbox"/> No <input type="checkbox"/>	ARE THE ADDRESSES OF THE BENEFICIARIES LISTED CORRECTLY ON THE NOTICE OF APPLICATION?” <i>Address should be civic address, not c/o address, not business address, not P.O. Box address</i>
Yes <input type="checkbox"/> No <input type="checkbox"/>	IF A BENEFICIARY WAS NOT SERVED BECAUSE OF DEATH OR ANOTHER REASON, LIST IN PARAGRAPH 3 OF THE AFFIDAVIT OF SERVICE AND PARAGRAPH 8 OF THE NOTICE OF APPLICATION? <i>State reason not served</i>
Yes <input type="checkbox"/> No <input type="checkbox"/>	ARE THE NAMES OF THE BENEFICIARIES CONSISTENT WITH THE APPLICATION? <i>Names to be consistent</i>
Yes <input type="checkbox"/> No <input type="checkbox"/>	IS THE NOTICE OF APPLICATION DATED? <i>Must be dated on the last page of the form</i>
Yes <input type="checkbox"/> No <input type="checkbox"/>	IS THE APPLICANT SWEARING THE AFFIDAVIT OF SERVICE? IS THE LAWYER SWEARING THE AFFIDAVIT ON BEHALF OF THE APPLICANT? <i>If it is not the Applicant, #1 of the Affidavit must be amended to state “I am the lawyer for the applicant for a certificate of appointment of estate trustee” to ensure correctness</i>
Yes <input type="checkbox"/> No <input type="checkbox"/>	IS THE AFFIDAVIT SIGNED BY THE AFFIANT? HAS THE COMMISSIONER SIGNED, COMPLETED THE JURAT AND MARKED THE NOTICE OF APPLICATION AS AN EXHIBIT? <i>This can be done on any page of the Notice of Application with corresponding name printed of the commissioner</i>
NOTE: ANY HANDWRITTEN CHANGES ON THE APPLICATION OR AFFIDAVIT MUST BE INITIALLED BY THE SAME COMMISSIONER WHO COMMISSIONED THE AFFIDAVIT	

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	<p>CONSENTS/RENUNCIATIONS</p> <p><i>Ensure correct prescribed form 74.18/74.19 are filed</i></p> <p>http://ontariocourtforms.on.ca/en/rules-of-civil-procedure-forms/pre-formatted-fillable-estates-forms/</p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>DOES THE <u>CONSENT(S)</u> HAVE THE NAME OF THE DECEASED (WITH AKA'S), THE DECEASED'S DATE OF DEATH, NAME OF PERSON ENTITLED TO SHARE IN THE ESTATE, AND NAME OF APPLICANT (WITH AKA'S)?</p> <p><i>Be consistent with all information</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS THE CONSENT SIGNED BY THE BENEFICIARY, DATED AND WITNESSED?</p> <p><i>Name of witness must be printed</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS THE CONSENT SIGNED BY A POA ON BEHALF OF A BENEFICIARY?</p> <p><i>A copy of the Power of Attorney must be provided</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>DOES THE <u>RENUNCIATION(S)</u> HAVE THE NAME OF THE DECEASED (INCLUDING AKA'S), DECEASED'S DATE OF DEATH, PERSON ENTITLED TO SHARE (RENOUNCING) AND APPLICANT'S NAME (AND AKA'S) CORRECTLY SET OUT?</p> <p><i>Check for accuracy</i></p> <p>NOTE: A RENUNCIATION IS NOT REQUIRED FROM A NEXT-OF-KIN WHO HAS AN EQUAL RIGHT TO APPLY</p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS THE RENUNCIATION(S) SIGNED DATED AND WITNESSED?</p> <p><i>Name of witness must be printed</i></p> <p>NOTE: A RENUNCIATION IS NOT REQUIRED FROM A NEXT-OF-KIN WHO HAS AN EQUAL RIGHT TO APPLY</p>

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Yes/No	CERTIFICATE OF APPOINTMENT OF ESTATE TRUSTEE WITHOUT A WILL (CAET) 74.20
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS THE NAME OF THE DECEASED (INCLUDING AKA'S) AND DECEASED'S DATE OF DEATH, OCCUPATION, ADDRESS CONSISTENT WITH THE APPLICATION AND ALL OTHER DOCUMENTS FILED?</p> <p><i>Must ensure consistency and accuracy</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS THE APPLICANT'S(S) NAME (INCLUDING AKA'S), ADDRESS, OCCUPATION CONSISTENT WITH THE APPLICATION AND OTHER DOCUMENTS BEING FILED?</p> <p><i>Note: The address could be the full postal address, or the City and Municipality</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS THE COURT ADDRESS CORRECT ON THE CERTIFICATE?</p> <p><i>Court address must be completed on the Certificate – DO NOT INSERT A DATE – THIS IS FOR THE REGISTRAR TO COMPLETE</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS THE BACK PAGE OF THE CERTIFICATE CORRECTLY COMPLETED WITH ALL CONTACT DETAILS?</p> <p><i>Court requires 2 copies of the prescribed back page</i></p>
Yes/No	BOND REQUIREMENTS
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>HAS A BOND BEEN ADDRESSED?</p> <p><i>Look at Sec 35 of the Estates Act: https://www.ontario.ca/laws/statute/90e21#BK36, and as applicable Re Henderson Estate: http://canlii.ca/t/221lx</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>HAVE CONSENTS BEEN RECEIVED FROM ALL OF THE BENEFICIARIES TO DISPENSE WITH THE BOND?</p> <p><i>If no, then the affidavit has to address this, asking for the bond to be reduced to the share of the person who is not consenting – i.e., minor beneficiary or beneficiary who cannot be found</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>HAS AN AFFIDAVIT IN SUPPORT OF THE REQUEST FOR AN ORDER THAT THE REQUIREMENT TO POST A BOND BE DISPENSED, ADDRESSING THE DEBTS OF THE ESTATE AND WITH AN UNDERTAKING TO PAY ANY DEBTS THAT ARE OUTSTANDING?</p> <p><i>Must be addressed</i></p>

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Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>DOES THE AFFIDAVIT ADDRESS WHETHER OR NOT THE DECEASED HAD A BUSINESS? <i>Must be addressed</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>DOES THE AFFIDAVIT ADDRESS THE DEBTS OF THE DECEASED? <i>IF OUTSTANDING, DEBTS ARE TO BE LISTED AND AN UNDERTAKING TO PAY ONCE THE CERTIFICATE HAS BEEN ISSUED</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>HAS A DRAFT ORDER TO DISPENSE WITH THE BOND BEEN FILED? <i>2 copies of a Draft Order need to be filed containing the prescribed header</i> http://ontariocourtforms.on.ca/en/rules-of-civil-procedure-forms/</p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>HAS A BACK PAGE BEEN FILED FOR THE DRAFT ORDER TO DISPENSE WITH THE BOND? <i>Prescribed back page must be provided</i> http://ontariocourtforms.on.ca/en/rules-of-civil-procedure-forms/</p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS A TRUST COMPANY APPOINTED TO BE A TRUSTEE? <i>If so, no bond is required if Trust Company is the applicant</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS THE SPOUSE THE APPLICANT AND SOLE BENEFICIARY? <i>If so, an affidavit re debts is to be filed in support of the application to be appointed as estate trustee</i></p> <p><i>NOTE: A bond is not required if the surviving spouse of the deceased is appointed estate trustee without a will and the net value of the estate is not more than \$200,000 however an affidavit of the applicant must be filed with the application setting forth the debts of the estate [s. 36(2) Estates Act, s. 45 Succession Law Reform Act].</i></p> <p><i>This does not include a person whom the deceased was living in a conjugal relationship outside of marriage</i></p>
Yes <input type="checkbox"/> No <input type="checkbox"/>	<p>IS THE AFFIDAVIT RE DEBTS PROPERLY SET OUT AS PER JUSTICE BROWN'S ENDORSEMENT Re: Estate of Robert James Henderson, dated 20081216, AS FOLLOWS? <i>Accordingly, when an applicant for a certificate of appointment of estate trustee makes a request under section 37(2) of the Estates Act for an order that a judge dispense with the requirement to post an administration bond, the applicant should file affidavit evidence in support of the request which contains the following:</i></p>

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- (i) The identity of all beneficiaries of the estate;***

- (ii) The identity of any beneficiary of the estate who is a minor or incapable person;***

- (iii) The value of the interest of any minor or incapable beneficiary in the estate;***

- (iv) Executed consents from all beneficiaries who are sui juris to the appointment of the applicant as estate trustee and to an order dispensing with an administration bond should be attached as exhibits to the affidavit. If consents cannot be obtained from all the beneficiaries, the applicant must explain how he or she intends to protect the interests of those beneficiaries by way of posting security or otherwise;***

- (v) The last occupation of the deceased;***

- (vi) Evidence as to whether all the debts of the deceased have been paid, including any obligations under support agreements or orders;***

- (vii) Evidence as to whether the deceased operated a business at the time of death and, if the deceased did, whether any debts of that business have been or may be claimed against the estate, and a description of each debt and its amount;***

- (viii) If all the debts of the estate have not been paid, evidence of the value of the assets of the estate, the particulars of each debt – amount and name of creditor – and an explanation of what arrangements have been made with those creditors to pay their debts and what security the applicant proposes to put in place in order to protect those creditors.***

Yes
No

DOES THE DRAFT ORDER PROPERLY SET OUT THE FOLLOWING?

THIS COURT ORDERS that the posting of an administration bond by the Estate Trustee is dispensed with.

Alternatively, if there are minor beneficiaries, then the bond cannot be dispensed with and has to be reduced to the share of the minors:

THIS COURT ORDERS that the bond be reduced to the share of the minor beneficiary, (state name) in the amount of _____;

If a beneficiary cannot be found then the money needs to be paid into the Accountant's office:

THIS COURT ORDERS that the share of the (Name of the person) in the amount of _____ be paid into the Accountant of the Superior Court.

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ADDITIONAL RESOURCES:

<https://lso.ca/lawyers/practice-supports-and-resources/practice-area/estates-and-trusts>

<https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/practice-supports-resources/best-practices-for-remote-commissioning-en.pdf>

HOW TO APPLY FOR PROBATE IN ONTARIO

https://www.attorneygeneral.jus.gov.on.ca/english/estates/how_to_apply_for_probate.php

HOW TO AVOID COMMON ERRORS IN ESTATE APPLICATIONS

https://www.attorneygeneral.jus.gov.on.ca/english/estates/avoiding_common_errors.html

TO OBTAIN A COPY OF THE COURT SERVICES DIVISION ESTATE MANUAL

Law firms may email your request to: csdmanual@ontario.ca

<https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/>

This checklist is intended for the purposes of providing information and guidance only and is not intended to be relied upon as the giving of legal advice and does not purport to be exhaustive.