

CASE IN POINT

Sales Tax Estate Planning Underwriting & Product Newsletter

Ontario's new small estate probate procedure



Effective April 1, 2021, Ontario's Smarter and Stronger Justice Act, 2020, has simplified the procedure for obtaining probate for a small estate, defined as an estate with a value of \$150,000.00 or less. Application for the Small Estate Certificate, which provides authority to deal with the assets of the deceased listed therein, can be made on-line or by regular mail to the Ontario Superior Court of Justice. If all required paperwork is submitted and in order, submission guidelines indicate that the Small Estate Certificate can be obtained within five business days.

Let's consider the following scenario to better understand how the probate process works for a small estate in Ontario:

Ming and Ransford have been married for 5 years. Following his annual visit to the doctor in April 2021, Ransford learns that he has a terminal illness and passes away a few months later. Ransford named Ming as estate trustee and the only beneficiary in his Will. Ransford's assets owned solely in his name are his car, a savings account, and some shares in a publicly traded company. The total value of his estate is \$120,000.00.

The bank that holds the funds in Ransford's savings account requests probate be completed before it will transfer the funds to Ming, as the estate trustee. Ming proceeds to file an application on-line for the Small Estate Certificate. She learns that she will need to submit Ransford's original Will, proof of his death, and specific court forms that will provide information about Ransford's estate assets and beneficiaries.



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Akua is a lawyer and subject matter expert in tax and estate planning. Her estate planning expertise includes, tax and probate planning, corporate reorganizations, cross-border will and trust planning, charitable giving, planning for special needs beneficiaries, estate planning for pets, and incapacity planning. Akua's experience includes working with owner-managers, entrepreneurs, professionals, seniors and parents of young families. Akua has also previously provided tax and estate planning advice and opinions to advisors from various financial institutions and their clients.

Akua is a frequent speaker and presenter on estate and trust issues and has written published articles as an estate law contributor to Advisors Edge Report as well as other publications. She is also an estate law tutor with the Law Society of Ontario. Akua has appeared on local television to discuss wills and estates, estate planning for the business owner, and powers of attorney. Additionally, she is the author My Lifepoint, an estate planning manual and workbook.

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Ming also learns that based on the \$120,000.00 value of Ransford's estate, estate administration tax (also referred to as probate tax), totaling \$1,050.00, will have to be paid when the application is filed. For estates having a value greater than \$50,000.00, the probate tax is calculated as \$15 for every \$1,000 (or part thereof) of the value of the estate. To calculate the tax, Ming uses the estate administration tax calculator provided by the [Ontario Ministry of the Attorney General](#).

Additionally, as part of the probate process, Ming discovers that she is required, if applicable, to send a copy of the probate application by email, regular letter mail, or courier to the beneficiaries named in Ransford's Will, and anyone entitled to receive a share of his estate, 30 days before she files the application. Since Ming is the sole beneficiary of Ransford's estate, and there is no one else entitled to receive a share of it, she is not required to send a copy of the application to anyone.

Ming files all the required documents and pays the probate tax to the local estates court in Kingston, Ontario, where she and Ransford lived together. Her application is successful and the Small Estate Certificate is issued to her. Ming provides a notarized copy of the Small Estate Certificate to the bank requesting it, and the funds from the savings account are transferred to an estate account that she opens. Ming can also use the Small Estate Certificate to have Ransford's car and his shares transferred as well.

Consider this additional information:

A few months after receiving the Small Estate Certificate, Ming discovers that Ransford owned a small piece of land in Belleville, ON, valued at \$60,000.00. The land titles office requires that Ming provide an estate certificate

confirming her appointment as estate trustee in order to transfer ownership of the property. However, the Small Estate Certificate Ming received from the estates court does not grant her authority to deal with the newly discovered land.

The discovery of this additional asset will cause the total value of Ransford's estate to exceed \$150,000.00. Ming would accordingly be required to make an application for a Certificate of Appointment of Estate Trustee With a Will, which is the second application stream that is available for applying for probate in Ontario. This application procedure is less streamlined, with the requirement for completion of more documents, and a longer processing time before the certificate of appointment is issued.

If the value of the land was \$30,000.00 or less, Ming would be required to file an application for an Amended Small Estate Certificate and include the land and its value as part of Ransford's estate. After an amended certificate was issued by the estates court, Ming could proceed to have title to the land transferred.

Irrespective of the probate application Ming files, she will also be required as estate trustee to file an Estate Information Return within 180 days of the issuance of either a Small Estate Certificate, Amended Small Estate Certificate or a Certificate of Appointment of Estate Trustee With a Will. For more information on the Estate Information Return, see [STEPUP Newsletter Changes to Ontario's Estate Administration Tax](#).

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