

In Case You Missed It: Updates to Ontario Probate Application Forms

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As we find ourselves well into the Fall season, we thought it important to remind estate practitioners that the warm and long summer days also brought some important changes to the Ontario court forms for applications for appointment of estate trustee (commonly referred to as probate applications) under the *Rules of Civil Procedure*. On July 6, 2023, O. Reg. 188/23 changed the following forms:

- Form 74A – Application for a Certificate of Appointment of Estate Trustee;
- Form 74.1A – Application for Small Estates Certificate; and
- Form 74J – Application for Certificate or Confirmation of Appointment.

The court will accept for filing the new versions as of July 6, 2023. The older versions of the forms can be filed until **November 3, 2023**. The February 1, 2022, versions of the revised forms will not be accepted for filing on or after **November 4, 2023**.

KEY CHANGES TO FORM 74A – APPLICATION FOR A CERTIFICATE OF APPOINTMENT OF ESTATE TRUSTEE AND FORM 74.1A – APPLICATION FOR SMALL ESTATES CERTIFICATE

Form 74A is required when applying for a Certificate of Appointment of Estate Trustee with a Will, with a Will Limited to the Assets referred to in the Will, and without a Will.

Form 74.1A is required when applying for a Small Estate Certificate (currently being an estate valued at \$150,000 or less).

The main changes introduced to Form 74A and 74.1A as of July 6, 2023 are as follows:

- **Part 3 is now Part 7:** Part 3 has been moved to a new Part 7 with Part 7 including more user guidance. For example, the new Part 7 includes guidance on the necessary disclosures and clarifying notes relating to the deceased's relationships (including marriages, termination of marriages and children) and potential estate beneficiaries (such as explaining that for an application made without a will, a common law spouse should not be identified as a beneficiary).
- **Part 5 (in Form 74A only):** This part has been amended to make it clearer that renunciation forms and consents should be filed together with the application as opposed to being attached to the application, thereby clarifying that service of these documents is not a requirement.
- **Part 8 (in Form 74A only):** Optional declarations have been added in Part 8 to provide guidance on evidence which should be submitted if the application is for an estate with more than one Will (for example, where there are primary and secondary wills). More specifically, where there are multiple Wills, the applicant is asked to confirm that the secondary (or other multiple) Will(s) have not revoked the Will being submitted for probate and to confirm that they will file a draft order (Form 74I) (see also the rule to file a draft order set out in rule 74.04(1)(g) of the *Rules of Civil Procedure*).

- Part 10: A checkbox has been added to allow an applicant to indicate that a court order appointing the applicant and dispensing with the bond requirement was made.
- Notice: Language clarifying that the value of the estate disclosed in the application does not necessarily reflect the amount that will be available for distribution to the beneficiaries has been added to the notice to beneficiaries.
- All parts: Additional grey shading has been included to highlight form directions for improved readability.

KEY CHANGES TO FORM 74J – APPLICATION FOR CERTIFICATE OR CONFIRMATION OF APPOINTMENT

Form 74J is required when applying for a Certificate of Appointment of Succeeding Estate Trustee with a Will, with a Will Limited to the Assets referred to in the Will, and without a Will. It is also required when applying for a Certificate of Appointment of Foreign Estate Trustee's Nominee as Estate Trustee without a Will, Certificate of Appointment of Estate Trustee During Litigation, Confirmation by Resealing of Appointment of Estate Trustee, and Certificate of Ancillary Appointment of Estate Trustee with a Will. The main changes introduced as of July 6, 2023 are as follows:

- Part 2: The changes to this part clarify that charities and contingent beneficiaries are to be included in the list of persons entitled to share in the distribution of the remaining estate.
- Part 8: A checkbox has been added to confirm that a court order appointing the applicant and dispensing with a bond was made.
- All parts: Additional grey shading has been included to highlight form directions for improved readability.

CONCLUSION: IMPORTANT TO USE THE UPDATED FORMS

Given that the court forms are often evolving and improving, estate practitioners are advised to consistently monitor such changes and ensure that they use the most up-to-date forms by the appropriate deadlines. Failure to keep up with such changes increases the risks of probate applications being rejected and delays result from having to redo and refile applications using the revised forms.

The above-noted information was obtained from the Ontario Court Services: Estate Forms under Rule 74 and 75 of the Rules of Civil Procedure,^[1] Ontario's Regulatory Registry, ^[2] and the Estate Court Form and Rules Amendments Introduced by O. Reg. 118/23, in effect on July 6, 2023 (which is a useful resource that summarizes the revisions in greater detail and tracks changes made to each section on the form).^[3]

The information and comments herein are for the general information of the reader and are not intended as legal advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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