



Administration Bonds

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Agenda

1. The purpose of Administration Bonds
2. When are they required?
3. When can they be dispensed with?
4. How to get them
5. How to release them



Purpose



- Protect beneficiaries and creditors for loss due to actions of the estate trustee
- Limited Protection?
 - Last resort for recovery
 - Section 35 of the Estates Act provides that the bond is “...conditioned for the due collecting, getting in, administering and accounting for the property of the deceased, and the bond shall be in the form prescribed by the rules of court, and in cases not provided for by the rules, the bond shall be in such form as the judge by special order may direct.”

When

A: An Intestacy

Unless:

1. Applicant is the surviving spouse (married only) and
 - a. the net value of the estate is less than the preferential share (\$350K - the deceased died on or after March 1, 2021); and
 - b. an affidavit setting forth the debts of the estate is filed.

OR

1. "Small Estate" Application AND
 - a. there are no minor heirs; and
 - b. there are no incapable heirs.

OR

1. The Applicant is a Trust Company



When

B. Non-Named Executor

The applicant is not the named executor in the Will UNLESS:

“Small Estate” Application

AND

- a. The applicant is a resident of the Commonwealth,
- b. There is no minor beneficiaries, and
- c. There are no incapable beneficiaries.



When

C. Non-Resident Executor

IF Executor is a resident outside of Canada OR in a Country that is not a member of the

Commonwealt

Countries by region

Africa

- Botswana
- Cameroon
- Gambia, The
- Ghana
- Kenya
- Kingdom of Eswatini
- Lesotho
- Malawi
- Mauritius
- Mozambique
- Namibia
- Nigeria
- Rwanda
- Seychelles
- Sierra Leone
- South Africa
- Uganda
- United Republic of Tanzania
- Zambia

Asia

- Bangladesh
- Brunei Darussalam
- India
- Malaysia
- Maldives
- Pakistan
- Singapore
- Sri Lanka

Caribbean and Americas

- Antigua and Barbuda
- Bahamas, The
- Barbados
- Belize
- Canada
- Dominica
- Grenada
- Guyana
- Jamaica
- Saint Lucia
- St Kitts and Nevis
- St Vincent and The Grenadines
- Trinidad and Tobago

Europe

- Cyprus
- Malta
- United Kingdom

Pacific

- Australia
- Fiji
- Kiribati
- Nauru
- New Zealand
- Papua New Guinea
- Samoa
- Solomon Islands
- Tonga
- Tuvalu
- Vanuatu

Members of the Commonwealth: <https://thecommonwealth.org/member-countries>

Other Situations

D. Estate Trustee during Litigation

In the case of estate trustee during litigation (unless bond dispensed with by the judge in the order for directions appointing the estate trustee during litigation)

E. Application for Succeeding Estate Trustee (74J) in certain circumstances:

- Succeeding estate trustee with a Will, where **alternate** named is not a Canadian resident or resident of the Commonwealth.
- Succeeding estate trustee with a Will, where last named executor has died.
- Succeeding estate trustee without a Will -where applicant is an individual (not a trust company)

F. Nomination by Foreign Estate Trustee

In the case of a foreign estate trustee nominating a person within Ontario as estate trustee

Other Situations

G. Resealing with no Will

Resealing of appointment of estate trustee without a Will

H. Ancillary Appointment with a Will

Ancillary Appointment of Estate Trustee with a Will

I. On Motion

Rule 74.11(2) Any person, including a creditor, who has a contingent or vested interest in an estate may at any time, on notice to the estate trustee or applicant for appointment, move for an order to have a bond filed or the amount of an existing bond increased or reduced. O. Reg. 484/94, s. 12.

Statutory Provision

Section 35 of the *Estates Act*

[The Bond shall] enure for the benefit of the Accountant of the Superior Court of Justice, with a surety or sureties as may be required by the judge, conditioned for the due collecting, getting in, administering and accounting for the property of the deceased, and the bond shall be in the form prescribed by the rules of court, and in cases not provided for by the rules, the bond shall be in such form as the judge by special order may direct.



Amount of Bond



Amount of security

The bond shall be in a penalty of **double** the amount under which the property of the deceased has been sworn, and the judge may direct that more than one bond be given so as to limit the liability of any surety to such amount as the judge considers proper. (R.S.O. 1990, c. E.21, s. 37 (1))

Power to reduce amount

The judge may at any time under special circumstances reduce the amount of or dispense with the bond. (R.S.O. 1990, c. E.21, s. 37 (2))

Amount of Bond

Rule 74.11- How to calculate the value of the bond in special circumstances

Where bond needed for Succeeding Estate Trustee

Rule 74.11 (1) (e) the security required for a succeeding estate trustee shall be based on the value of the assets of the estate remaining to be administered at the time the application for a certificate of appointment as succeeding estate trustee is made; and

Where bond needed for Resealing/Ancillary Appointment

Rule 74.11 (1) (f) the security required for confirmation by resealing of the appointment of an estate trustee, or for an ancillary appointment of an estate trustee, shall be based on the value of the assets of the estate over which the estate trustee seeks jurisdiction in Ontario. O. Reg. 484/94, s. 12; O. Reg. 24/00, s. 13; O. Reg. 575/07, s. 1.



Surety vs Bond

The bond must be:

1. From an insurer licensed under the *Insurance Act* to write surety and fidelity insurance.

OR

1. by two personal sureties (each must post a bond to cover the total estate value) or one personal surety where the estate value is \$100,000 or less.

Personal Surety must be-Ontario resident who is not:

- (i) a minor,
- (ii) a registrar, or
- (iii) a solicitor



Surety vs Bond

Rule 74.11 (1) Unless the court orders otherwise,

- (a) the bond required by section 35 of the *Estates Act* shall be the bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance in Ontario (Form 74L) or of one or more personal sureties (Form 74M);
- (b) a registrar of the court or a lawyer shall not be a personal surety;
- (c) a personal surety must be a resident of Ontario who is not a minor;
- (d) one personal surety is sufficient where the value of the assets of the estate does not exceed \$100,000;



Surety vs Bond

Obtaining an administrative Bond can be time consuming and expensive



- Lawyer assistance often needed to obtain an administration bond
- Invasive personal and financial questions
- Cost of Bond depends on estate's value (often a percentage of the bond amount plus annual fee).

Form of Bond

FORM 74L
Courts of Justice Act
ONTARIO
SUPERIOR COURT OF JUSTICE
BOND — INSURANCE OR GUARANTEE COMPANY

BOND NO. _____ AMOUNT: \$ _____

In the estate of *(insert name)*, deceased.

The principal in this bond is *(insert name)*.

The surety in this bond is *(insert name)*, an insurer licensed under the *Insurance Act* to write surety and fidelity insurance in Ontario.

The obligee in this bond is the Accountant of the Superior Court of Justice acting for the benefit of creditors and persons entitled to share in the estate of the deceased.

The principal and the surety bind themselves, their heirs, executors, successors and assigns jointly and severally to the Accountant of the Superior Court of Justice in the amount of _____ dollars (\$ _____).

The principal as an estate trustee is required to prepare a complete and true inventory of all the property of the deceased, collect the assets of the estate, pay the debts of the estate, distribute the property of the deceased according to law, and render a complete and true accounting of these activities when lawfully required.

The primary obligation under this bond belongs to the principal. The principal is liable under this bond for any amount found by the court to be owing to any creditors of the estate and persons entitled to share in the estate to whom proper payment has not been made.

The surety, provided it has been given reasonable notice of any proceeding in which judgment may be given against the principal for failure to perform the obligations of this bond shall, on order of the court, and on default of the principal to pay any final judgment made against the principal in the proceeding, pay to the obligee the amount of any deficiency in the payment by the principal, but the surety shall not be liable to pay more than the amount of the bond.

The amount of this bond shall be reduced by and to the extent of any payment made under the bond pursuant to an order of the court.

The surety is entitled to an assignment of the rights of any person who receives payment or benefit from the proceeds of this bond, to the extent of such payment or benefit received.

Date _____

SIGNED, SEALED AND DELIVERED

in the presence of:

(insert name and signature)

Witness

(insert signature)

Principal

(insert signature)

Surety

RCP-E 74L (September 1, 2021)

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FORM 74M
Courts of Justice Act
ONTARIO
SUPERIOR COURT OF JUSTICE
BOND — PERSONAL SURETIES

BOND NO. _____ AMOUNT: \$ _____

In the estate of *(insert name)*, deceased.

The principal in this bond is *(insert name)*.

The sureties in this bond are *(insert names)*.

The obligee in this bond is the Accountant of the Superior Court of Justice acting for the benefit of creditors and persons entitled to share in the estate of the deceased.

The principal and the sureties bind themselves, their heirs, executors, successors and assigns jointly and severally to the Accountant of the Superior Court of Justice in the amount of _____ Dollars (\$ _____).

The principal as an estate trustee is required to prepare a complete and true inventory of all the property of the deceased, collect the assets of the estate, pay the debts of the estate, distribute the property of the deceased according to law, and render a complete and true accounting of these activities when lawfully required.

The primary obligation under this bond belongs to the principal. The principal is liable under this bond for any amount found by the court to be owing to any creditors of the estate and persons entitled to share in the estate to whom proper payment has not been made.

The sureties, provided they have been given reasonable notice of any proceeding in which judgment may be given against the principal for failure to perform the obligations of this bond shall, on order of the court, and on default of the principal to pay any final judgment made against the principal in the proceeding, pay to the obligee the amount of any deficiency in the payment by the principal, but the sureties shall not be liable to pay more than the amount of the bond.

The amount of this bond shall be reduced by and to the extent of any payment made under the bond pursuant to an order of the court.

The sureties are entitled to an assignment of the rights of any person who receives payment or benefit from the proceeds of this bond, to the extent of such payment or benefit received.

Date _____

SIGNED, SEALED AND DELIVERED

in the presence of:

(insert name and signature)

Witness

(insert signature)

Principal

(insert signature)

Surety

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Dispensing with the Bond



The applicant can request the reduction or waiver of the bond:

1. Applicant's Affidavit (Contents of Affidavit from *Re Henderson*)

- 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...;
- v. The last occupation of the deceased;

Dispensing with the Bond



- vi. Evidence as to whether all the debts of the deceased have been paid, including any obligations under support agreement 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.

Dispensing with the Bond



2. Consents of beneficiaries

3. Order to Dispense with the Bond

- Draft order filed with the court should read: “THIS COURT ORDERS that the posting of an administration bond by the Estate Trustee is dispensed with.”

(Re Henderson Estate)

Limiting Bond to Estate Value

- If the Court won't dispense with the bond, the Court still has the discretion to reduce the amount of the bond (Section 37(2))
- Practice has developed such that the size of the bond is often reduced to the sworn value of the estate.



Collecting on a Bond



Power of courts as to assignment of bonds

38 The judge on application made in a summary way and on being satisfied that the condition of the bond has been broken may order the registrar to assign the bond to some person to be named in the order, and such person is thereupon entitled to sue on the bond in the person's own name as if it had been originally given to the person, and shall recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the bond. R.S.O. 1990, c. E.21, s. 38.

Substitution and Release of Bond

To Release a Bond:

1. Motion must be made (not before 11 months from posting)
2. Affidavit from the estate trustee
3. Fee Payable
4. Court's approval is required



Substitution and Release of Bond

To Release a Bond:

- Affidavit from the estate trustee acknowledging that the debts of the estate have been paid, how the residue of the estate was distributed, confirmation that the beneficiaries have released the estate and whether any beneficiaries of the estate included minors or individuals under disability.
- Court may release a bond where final accounts passed and all assets distributed (Section 43).
- Notice of motion must be served on Children's lawyer where minor beneficiary and on PGT where mentally incapable beneficiary.



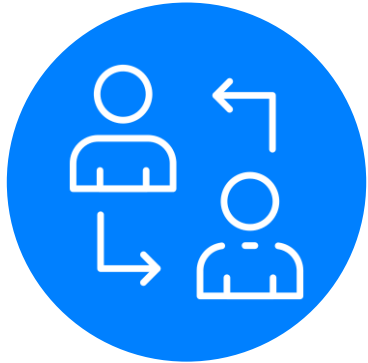
Substitution of Bond

Substitution of security

41 (1) Where a surety for an administrator or guardian desires to be discharged from their obligation or where an administrator or guardian desires to substitute other security for that furnished by the surety, the judge may allow other security to be furnished in lieu of that of such surety or of the security so furnished on such terms as the judge considers proper, and the judge may direct that, on the substituted security being furnished, and, if the judge so directs, the accounts of the administrator or guardian being passed, the surety or sureties be discharged. R.S.O. 1990, c. E.21, s. 41 (1).

How application made

(2) The application may be made without notice or on such notice as the judge may direct. R.S.O. 1990, c. E.21, s. 41 (2).



Where A Bond Must Be Addressed

Table 7. *Circumstances where a bond must be addressed*

Is there a Will?	Applicant resident in Canada or in a Common-wealth country	Applicant named as estate trustee in Will	Applicant is deceased's married spouse	Net estate valued at over \$350k (for death on or after March 1, 2021) or valued at over \$200k (for death before March 1, 2021)	Beneficiary is minor or incapable adult	Form 74A Application (Certificate of Appointment of Estate Trustee)	Form 74.1A Application (Small Estate Certificate)
No			No		Yes	Bond required (or order dispensing with a bond)	Bond required (or order dispensing with a bond)
No			No		No	Bond required (or order dispensing with a bond)	No bond
No			Yes	Yes	Yes	Bond required (or order dispensing with a bond)	Bond required (or order dispensing with a bond)
No			Yes	Yes	No	Bond required (or order dispensing with a bond)	No bond
No			Yes	No	Yes	No bond if spouse filed affidavit setting forth debts of estate	No bond if spouse filed affidavit setting forth debts of estate
No			Yes	No	No	No bond if spouse filed affidavit setting forth debts of estate	No bond if spouse filed affidavit setting forth debts of estate
Yes		No			Yes	Bond required (or order dispensing with bond)	No bond
Yes		No			No	Bond required (or order dispensing with a bond)	No bond
Yes	Yes	Yes			Yes	No bond	No bond
Yes	Yes	Yes			No	No bond	No bond
Yes	No				Yes	Bond required (or order dispensing with bond)	Bond required (or order dispensing with bond)
Yes	No				No	Bond required (or order dispensing with bond)	Bond required (or order dispensing with bond)