


Estate planning

Acting as a Personal Representative: what to consider



A close-up photograph of a woman with long dark hair hugging a man from behind. She is smiling broadly with her eyes closed, and her hands are wrapped around his chest. The man's head is visible on the left side of the frame, showing he is balding. The background is softly blurred, suggesting an indoor setting with warm lighting.

A friend or a family member has made an important decision – they’ve asked you to be the Personal Representative* of their estate. We will cover the most frequently asked questions of being a Personal Representative, so you can make an informed decision.

* For most of Canada, a Personal Representative of an estate is called the Executor. In Quebec, the legal term is Liquidator. In Ontario, the term is Estate Trustee. While Executor remains a very commonly used term across the country, for simplicity, Personal Representative is used in this report.

Why was I chosen?

It's an honour to be trusted with the important task of being a Personal Representative – an honour that also comes with a lot of responsibilities. You don't have to be an expert in law, taxes, investments or real estate – but your duties may require significant knowledge and understanding of these and many other areas. Among other things, a Personal Representative is expected to distribute assets, deal with financial institutions, creditors, lawyers, notaries, accountants, insurance companies and various government agencies.

All of this and the need to oversee the probate process in common law jurisdictions, taxation requirements, estate administration and related paper work will inevitably require time. So you'll need strong time management skills – as well as integrity, good judgment and the ability to interact effectively with grieving relatives, as well as any others intimately associated with the person whose estate you're handling.

The person who has asked you to be their Personal Representative believes you're diligent, honest and up to the task. He or she has faith in your ability to carry out the instructions in their Will.

It's easy to see that being a Personal Representative takes time, effort and careful attention to detail. But there are other considerations. For example, if you have a close relationship with the person who has asked you, you should ask yourself this question right away:

Will the emotion and stress you'll feel at the time of their death be too great to allow you to effectively carry out your duties? If you believe you're emotionally equipped to handle this important job, then you should also be equipped with the information you need to fully understand the scope of these duties – so read on.

What is a Personal Representative?

A Personal Representative is the person named in a Will who is responsible for settling the deceased's affairs after death. In other words, it's up to the Personal Representative to control and distribute the property of the deceased in accordance with the directions contained in their Last Will and Testament.

You are responsible for meeting all the legal and financial requirements of managing estate assets and settling the estate, including the distribution of assets to the beneficiaries and any others entitled to share in the proceeds of the estate. In some cases, your responsibility can extend even longer – if, for example, there are outstanding claims against the estate that must be adjudicated in court.

How difficult is it to be a Personal Representative?

The degree of difficulty really depends on the size and complexity of the estate. You'll find it a reasonably straightforward process if the estate consists of only a few things like a car, a house, some personal belongings and modest savings. You'll discover that it can be much tougher and more time consuming, if for example there are many beneficiaries, an assortment of investments and debts, the deceased owned a business, the Will is challenged by someone who feels left out, or the Will includes a trust.

Expect to make a commitment

A comprehensive list of duties runs to more than 40 tasks. Here are some of the major jobs you'll face:

- A Personal Representative's duties typically begin with arranging the funeral and paying for it out of estate assets.
- You will need to complete a number of routine matters such as informing pension offices, life insurance companies and similar agencies as well as dealing with the deceased's mail, charge cards, memberships, vehicle(s) and so on.
- It may be necessary for you to ensure that dependants receive enough money to take care of their daily needs until the estate is distributed.
- You must thoroughly review the Will, gather information on all beneficiaries, put together a detailed list of assets – including government, employment and insurance death benefits, investments held in RRSPs or RRIFs, and other investments – and liabilities.
- You are responsible for ensuring the Will is probated (if required), for maintaining estate accounts, for reporting and paying all required taxes, for distributing the remaining money and property according to the instructions in the Will, and for providing a final statement of accounts to all beneficiaries.
- In Quebec, Wills made in the presence of witnesses and holograph Wills require probate (which is a different process than in common law jurisdictions) to validate the form of the Will and to allow for the preparation and delivery of authentic copies.

“Even when you have distributed all of the known assets of the estate and obtained all necessary tax clearances, your duties may not necessarily end, as estate assets or debts may turn up, even years later.”





What are the legal responsibilities of a Personal Representative and when do they end?

A Personal Representative can be held personally liable if they have been found to have breached their duties to the deceased and the estate. Ideally a Personal Representative should obtain a Clearance Certificate from the Canada Revenue Agency (CRA) and in Quebec also from Revenue Quebec, before distributing estate assets to beneficiaries. In the absence of this certificate, the Personal Representative may be held personally liable with respect to any taxes owed. That is just one reason why it is always a good strategy to access professional advice from accountants, lawyers or notaries as required to ensure that all financial and tax requirements are effectively discharged.

Can a Personal Representative be a beneficiary of the Will?

A Personal Representative has the responsibility of treating all beneficiaries fairly and equally under the directions given in the Will. As long as there is no conflict of interest that would create a risk that a Personal Representative will not treat all beneficiaries equitably, there is nothing to prevent the individual from being a beneficiary of the estate.

“A Personal Representative has the responsibility of treating all beneficiaries fairly and equally under the directions given in the Will.”

Does a Personal Representative get paid?

A Personal Representative is usually entitled to a fee which can be an amount stated in the Will. If the Will does not state a fee, remuneration is established by the court prior to payment. The amount of payment is typically based on the size and complexity of the estate and the amount of time and effort required. The rules will vary between jurisdictions.

If there is more than one Personal Representative, the fee is split, often in unequal shares, depending on who does the most work. Alternatively, when a Personal Representative is also a beneficiary and family member, the usual practice is to forego any fees, since they are taxable.

Reasonable fees paid to accountants, lawyers, notaries in Quebec and other professionals, as well as any expenses incurred by the Personal Representative while settling the estate (postage, long distance charges, mileage, and so on) are usually paid for out of the estate.

How can I explain to someone close to me that I don't wish to be a Personal Representative?

Be candid. Tell them the reasons why you feel you can't or don't want to do the job. You may not have enough time to devote to it; perhaps you live too far away to maintain the degree of frequent contact required; or maybe you're simply not comfortable assuming the role. Your relative or friend will appreciate your candour and seek out another person for the job.





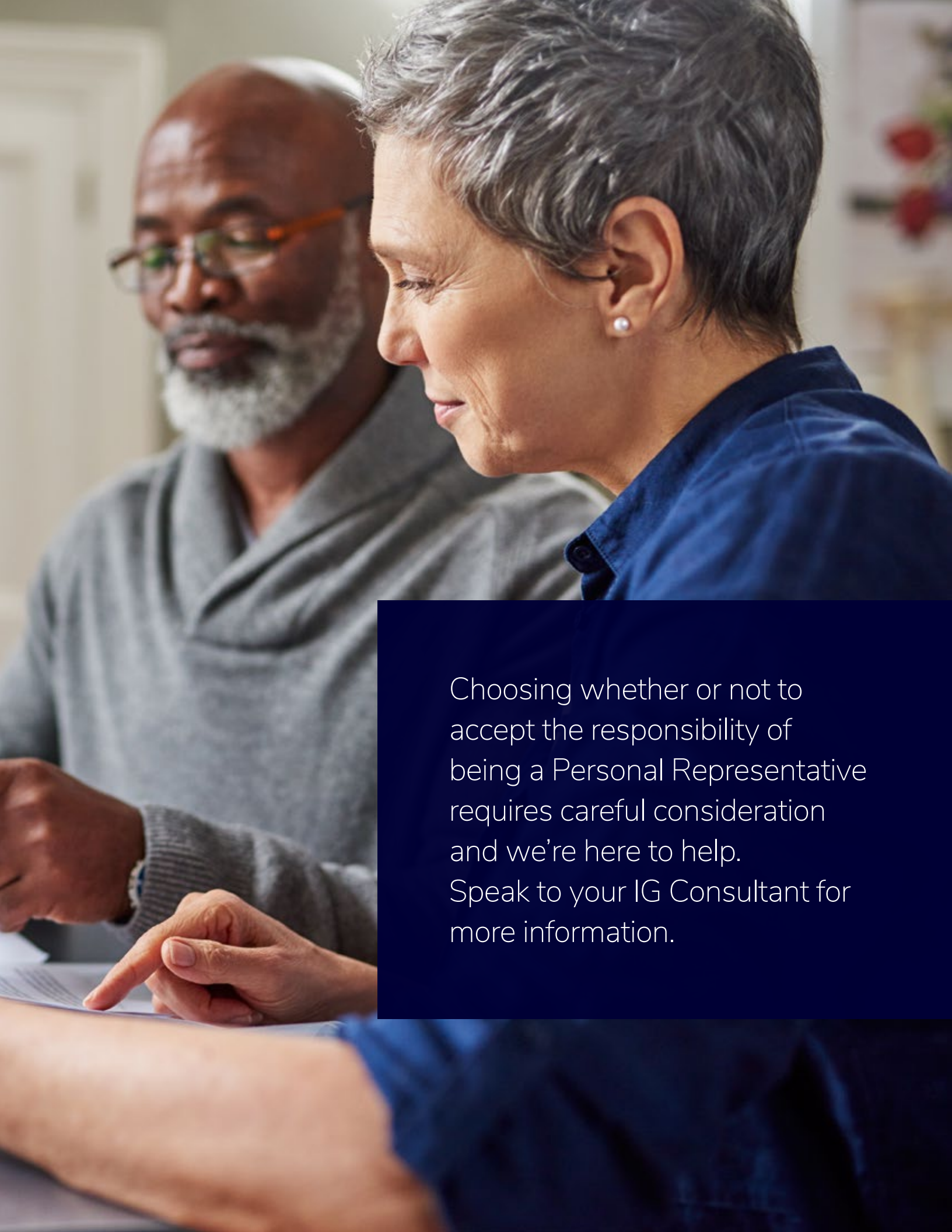
Can I say yes now and change my mind later?

Although it is usually possible to renounce your position, in some cases a court may not allow you to stop acting if there is no suitable candidate to take over for you; as a result, you should not agree to act as personal representative unless you are prepared to complete the job. If for any reason you decide you can't effectively do the job, you can usually renounce your position. However, if you know that the estate may be subject to litigation or be insolvent, it is usually best not to accept the appointment, as it may be more difficult to renounce it later. In Quebec, if you are the sole heir, you may be bound to accept the duties of Personal Representative.

Should a Personal Representative seek help from professionals?

Many Personal Representatives quickly realize they lack the range and depth of knowledge to effectively settle an estate. Professional advice can help save time, preserve estate capital, avoid personal frustration and provide peace of mind that the Personal Representative's duties have been effectively and legally discharged.





Choosing whether or not to accept the responsibility of being a Personal Representative requires careful consideration and we're here to help. Speak to your IG Consultant for more information.

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