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the right
to foresee.

Consult your notary!
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What do you do when someone dies?

What are your responsibilities?
What documents do you need?

The steps

Before settling a succession, you first have to take care of the funeral and obtain the documents relating to the death.

Your notary will advise you on what to do following a death.

The funeral

WHAT DO YOU NEED TO CHECK?

The first thing to check is whether the deceased had made prior funeral arrangements or signed a document expressing his wishes. Ask the funeral home or cemetery operator to check the new registry for funeral prearrangements and for pre-purchased sepulture contracts. Otherwise, check whether the deceased expressed anything in his will or to a loved one.

WHO DECIDES?

If the deceased made no stipulations about the funeral, or if it is impossible to establish what he wanted, the heirs must then agree on the appropriate approach.

WHO PAYS?

Normally, funeral costs are paid by the succession. If the succession is insolvent, any loved one (family or friend) may pay the funeral costs and claim the death benefit from Retraite Québec (if available) in their capacity as payer within 60 days of the death. Proof of payment must be provided to Retraite Québec with the completed form. In most cases, the person signing the funeral service contract following the death of a loved one also personally commits to pay the funeral costs. That way, if the succession is insolvent and the deceased did not contribute enough to the Québec Pension Plan to be eligible for the death benefit, this person would not be reimbursed for the costs paid.

Protecting property

The liquidator must take every measure necessary to protect the property of the deceased until the succession has been settled. If the identity of the liquidator is not yet known, it is up to the heirs to protect the deceased's property.

The liquidator, previously called the “executor”, is the person responsible for settling the succession. He is appointed in the will—or by the heirs, if no will was made. Note that just because a person is appointed in the will it does not mean that he must agree to take on such duty. He can decline and even resign under some conditions. Refer to your notary to find out how or read the brochure about the liquidator for more information about the matter.

Your notary will advise you on the **measures to be taken** to protect the money and property of the deceased.

For example:

- ⊕ Contracting theft or fire insurance.
- ⊕ Collecting income from a building or a business.
- ⊕ Selling, or handing over to the heirs, any assets that are perishable, lose value rapidly or are too expensive to maintain.

The assets of the deceased will be used to pay his debts (such as taxes and specific legacies) and other costs related to his passing (funeral costs and fees to obtain a death certificate, for example). What remains is the inheritance to be divided.

Your notary will also advise you on **what to avoid**.

For example:

- ⊕ Avoid appropriating items from the deceased's property before completing all phases of the settlement of the succession, because this generally implies acceptance of the succession. You would then no longer be able to renounce the succession. If there is a deficit, you would be personally liable for the debts.
- ⊕ Do not voluntarily hide, sell or appropriate property belonging to the deceased with the dishonest intent of depriving the other heirs. You could forfeit your share of the inheritance.

Documents relating to the death

Obtaining a copy of the death act or a death certificate

1 TRANSMIT THE DOCUMENTS TO THE DIRECTEUR DE L'ÉTAT CIVIL

A representative of the funeral home will give you a copy of the attestation of death prepared by a physician as well as a declaration of death form to be filled out. The representative will also offer you the option of filling out the Application for the simplified forwarding of information relative to the death. This form makes it easier for the loved ones of the deceased to notify several government departments of the death in one step (e.g. Retraite Québec for pension and family allowance, CNESSST; Service Canada for social insurance).

These documents must then be sent to the Directeur de l'état civil with the deceased's health insurance card. In most cases, the funeral home will take care of it for you.

If given the responsibility, your notary will take care of all formalities resulting from a death

2 APPLY TO THE DIRECTEUR DE L'ÉTAT CIVIL TO OBTAIN A COPY OF THE DEATH ACT OR A DEATH CERTIFICATE

After receiving these documents, the Directeur de l'état civil prepares a death act that repeats the information contained in the attestation of death and the declaration of death.

The original of the death act is kept by the Directeur de l'état civil. You may request two official documents:

- A copy of the death act
- A death certificate

Either of these documents may be requested by financial institutions to settle the succession and for will searches.

While waiting for these documents, you may ask the funeral home to provide an **attestation of death**. This document is signed by a representative of the funeral home and confirms the person's death. It is helpful for notifying the financial institution where the deceased's financial assets are held of the death and for putting an end cancelling the deceased's various services or subscriptions (electricity, telephone, newspapers and so on).

Did you know?

→ People named in the will, as well as people who are not named in the will but would have inherited if there was no will, can obtain a copy of the will or the excerpt concerning them. However, a person who is not in the will and who is not an heir under the law is not entitled to a copy of the will, unless the liquidator or the heirs agree to provide them with a copy.

Searching for a will

To settle a succession, you must check whether the deceased had a will.

- Go through the deceased's personal papers and obtain access to his safety deposit box.
- Check with members of the deceased's family.
- Submit a search application to the Register of Testamentary Dispositions of the Chambre des notaires and of the Barreau du Québec. This is mandatory. You will then obtain **two certificates** confirming whether a will has been registered with them or not.

1 THERE IS NO WILL

Your notary will establish who the legal heirs are. He will counsel them as to the choice of a liquidator.

He will also prepare a document called a **declaration of heredity** which confirms, among other things, the identity of the heirs and of the appointed liquidator. Certain financial institutions insist on seeing this document before allowing access to the deceased's records, property or money.

2 THERE IS A WILL

If the deceased's final will is **notarized**, you must have in your possession a certified true copy of the will and signed by the notary, the clerk or a person authorized by law to sign. This document is generally sufficient to settle the succession.

If the deceased's final will is **not notarized**, your notary will have it probated according to the law. The settlement of the succession may only begin after the will has been probated.

→ HOW TO PREPARE

Information to collect

- The full name, contact information, date of birth and social insurance number of the deceased
- The date and place of death
- The documents relating to the deceased's civil status, such as a marriage certificate, marriage contract or judgment of divorce
- The original of the will and the original of any changes that may have been made
- Any other information requested by your notary

Food for thought

- Have you sent to the Directeur de l'état civil the deceased's attestation of death, declaration of death, health insurance card and the Application for the simplified forwarding of information relative to the death?
- Do you have an official copy of the death act or of the certificate of death issued by the Directeur de l'état civil?
- Have you obtained search certificates from the Register of Testamentary Dispositions of the Chambre des notaires and of the Barreau du Québec?
- Did the deceased have a will? Has the will been modified? Is it notarized?
- Any other question raised by your notary.