

miltons estates

estates law

Estate trustee bonding rules

Location of first probate, basis of appointment & trustee's residence	Bonding requirement
If Ontario is the first jurisdiction for probate	
Testate (with a will)	
Estate under \$150,000 and executor named in will	No bond required
Estate over \$150,000 and executor named in the will	
Executor resident in Canada or Commonwealth	No bond required
Executor not resident in Canada or Commonwealth	Bond or dispense
Executor NOT named in the will	
1) Estate under \$150,000 and	Bond or dispense
<ul style="list-style-type: none">the applicant is not the deceased's spouse, orthe applicant is the deceased's spouse but has not filed an affidavit asking the court to dispense with the bond	
2) Estate over \$150,000 and	
Executor resident in Canada or Commonwealth	Bond or dispense
Executor not resident in Canada or Commonwealth	Bond or dispense
Intestate (no will)	
Estate over \$150,000	
Trustee resident in Ontario	Bond or dispense
Trustee not resident in Ontario: usually impossible, except in very simple estates.	Bonding generally not applicable
Estate under \$150,000 and there are minor or incapable adult beneficiaries, and	
<ul style="list-style-type: none">the applicant is not the deceased's spouse, or	Bond or dispense

- the applicant is the deceased's spouse but has not filed an affidavit asking the court to dispense with the bond Bond or dispense

Estate already probated outside Ontario

In any other province in Canada or in the Commonwealth

Re-sealing: original probate with a Will No bonding

Re-sealing: original probate of intestacy No bonding

Outside the Commonwealth

With a will: ancillary grant: regardless of residence of trustee Bond or dispense

No will: nominee of foreign trustee must be resident in Ontario Bond or dispense

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Requirements for an application to dispense with a bond*:

1. The identity of all beneficiaries of the estate;
2. The identity of any beneficiary of the estate who is a minor or incapable person;
3. The value of the interest of any minor or incapable beneficiary in the estate;
4. 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. If consents cannot be obtained from all the beneficiaries, the applicant must explain how he or she intends to protect the interests of those beneficiaries by way of posting security or otherwise;
5. The last occupation of the deceased;
6. Evidence as to whether all the debts of the deceased have been paid, including any obligations under support agreements or orders;
7. 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;
8. 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.

* Re Henderson, 2008 CanLII 69136 (ON SC)