

## Estate court form and rule amendments introduced by O. Reg. 188/23, in effect on July 6, 2023

	Topic	Change	Text changes introduced by O. Reg. 188/23 (additions are set out in purple text; deletions are struck; black text is former text; grey highlights instructions)
<b>Form 74A and 74.1A: Application for a Certificate of Appointment of Estate Trustee; Application for Small Estates Certificate</b>			
1	<p>Part 3 - Deceased's spousal relationships section is moved to</p> <p>Part 7 - Deceased's relationships</p>	<p>Clarifies questions and provides more user guidance by:</p> <ul style="list-style-type: none"> <li>improving question and section flow by moving Part 3 ("Deceased's Spousal Relationships") to a new Part 7, ("Deceased's Relationships"), breaking down the questions into shorter questions.</li> <li>providing more guidance on necessary disclosures relating a deceased's relationships and potential estate beneficiaries.</li> <li>allowing space on the form for certain answers, removing the need to attach a schedule and reducing the potential for error in failing to attach the schedule.</li> <li>removing the need to duplicate information in two different sections (for example, if all spouses/children are listed in Part 6 - Beneficiaries, it would no longer be necessary to list them in Part 7 - Deceased's Relationships as well)</li> <li>explaining that in an application made without a will a common law spouse should not be identified as a beneficiary in Part 6 (given that they would not have an interest under the intestacy provisions of the <i>Succession Law Reform Act</i>).</li> <li>clarifying the questions regarding the deceased's marriages and termination of any marriages in questions B.2(b) and C.1(a)(b) in new questions A.1. 3. 4.</li> <li>clarifying the questions regarding the deceased's children in questions C.1(b) and C.3 in a new question C.2 (a).</li> <li>adding a definition of child (a reference to definition in the <i>Succession Law Reform Act</i> and <i>Children's Law Reform Act</i>) to provide guidance on who should be identified as beneficiaries (in Part 6) and served with the application.</li> <li>adding questions about children who died before or after an intestate deceased to provide guidance on who should be identified as beneficiaries of the share of those children (in Part 6) and served with the application (new questions C.2(b)(c)).</li> </ul>	<p><b>A. Complete if applying with a Will or Without a Will</b></p> <p>1. Was the deceased ever married? Yes/No</p> <p><i>If yes, complete questions 2 to 4. Also, complete Section B if applying with a Will. If no, complete Section C if applying without a Will or go to Part 8 if applying with a Will.</i></p> <p>2.4.a. Was the deceased married at the time of death? Yes/No</p> <p>b. <i>If the answer to (a) is "yes" to (a)</i>, were the deceased and their spouse separated and at the time of death living separate and apart as a result of the breakdown of their marriage? (Separation is defined in ss. 17 and 43.1 of the <i>Succession Law Reform Act</i>). Yes/No Give details here or in an attached schedule: _____.</p> <p>c. <i>If the answer to (a) is "yes", is the name of the married spouse set out in Part 6 - Beneficiaries? Yes/No</i></p> <p>d. <i>If the answer to (c) is "no", provide the name and address of the married spouse. _____.</i></p> <p>3.2.a. Is the married spouse of the deceased an applicant? Yes/No</p> <p>b. <i>If the answer to (a) is "yes" to (a)</i>, has the spouse elected to receive an entitlement under the <i>Family Law Act</i> s. 5? Yes/No</p> <p>c. <i>If the answer to (b) is "yes" to (b)</i>, explain why the spouse is entitled to apply. Give details here or in an attached schedule: _____.</p> <p>4a. Were any of the deceased's marriages terminated by divorce or a declaration of nullity? Yes/No</p> <p>b. <i>If the answer to (a) is "yes", provide the name of the former spouse and the date of divorce or declaration of nullity. If there is a Will, indicate whether the date of divorce or declaration of nullity is after the date of the Will. (insert more rows if needed or attach a schedule) _____.</i></p> <p><b>B. Complete if applying with a Will</b></p> <p>1. Was the Will dated earlier than January 1, 2022? Yes/No</p> <p>b. <i>If the answer to (a) is "yes", did the deceased person marry after the date of the Will and before January 1, 2022? Yes/No</i></p> <p>c. <i>If the answer to (b) is "yes" to (a)</i>, explain why the Will was not revoked by marriage (e.g., declaration in the Will that it was made in contemplation of marriage or spouse filed an election to take under the Will). Give details here or in an attached schedule: _____.</p> <p><del>2. (a). Was any marriage of the deceased person terminated by a judgment absolute of divorce, death or declared a nullity after the date of the Will?</del></p> <p><del>b. If yes to (a), attach a schedule and give details regarding the termination of any marriage of the deceased person by a judgment absolute of divorce, death or declaration of nullity.</del></p> <p><b>C. Complete if applying without a Will</b></p> <p><del>1a. Was the deceased person ever legally married? —</del></p> <p><del>b. If yes to (a), attach a schedule and provide the following information:</del></p> <ul style="list-style-type: none"> <li><del>• Name and current address of the deceased's married spouse and of each former married spouse.</del></li> <li><del>• Whether any of the marriages was terminated and, if so, the method of termination of each marriage (by divorce, by death or by declaration of nullity).</del></li> <li><del>• Name and address of each child of each of the marriages.</del></li> </ul>

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			<p><del>Name of each child who died before the deceased and name and address of that deceased's person's children, if any.</del></p> <p>1. 2. a. Was the deceased person living with a person in a conjugal relationship <del>outside</del> <b>other than</b> marriage immediately before their death? Yes/No</p> <p style="padding-left: 40px;">i. <b>If the answer to (a) is "yes"</b>, <del>yes to (a)</del> provide the name and address of the person who was living with the deceased <del>here or in an attached schedule:</del> <i>(insert more rows if needed or attach a schedule)</i></p> <p style="padding-left: 80px;">_____</p> <p><i>Note: a person living with the deceased in a conjugal relationship other than marriage should not be listed in Part 6 - Beneficiaries.</i></p> <p><del>3a.. Did the deceased person have children born outside of marriage?</del></p> <p><del>b.. If yes to (a) attach a schedule and provide the name and address of each child</del></p> <p>2a. Did the deceased have any children? Yes/No <i>(Select "yes" if the deceased had a child inside or outside of marriage, adopted a child, was declared to be a child's parent by court order or had a child who was born after the deceased's death; see definition of "child" under s.1 of the Succession Law Reform Act and definition of "child" and "parent" in Part 1 of the Children's Law Reform Act).</i></p> <p style="padding-left: 40px;">i. <b>If the answer to (a) is "yes"</b>, is the name and address of each surviving child of the deceased set out in Part 6 – Beneficiaries? Yes/No</p> <p style="padding-left: 40px;">ii. <b>If the answer to (a)(i) is "no"</b>, provide the names and addresses of the children who are not listed in Part 6 - Beneficiaries. If any of these children are minors, provide their dates of birth <i>(insert more rows if needed or attach a schedule)</i>: _____</p> <p><i>If the answer to 2(a) is "yes", answer questions 2(b) and 2(c).</i></p> <p>b. Did the deceased have a child/children who died before the deceased? Yes/No</p> <p style="padding-left: 40px;">i. <b>If the answer to (b) is "yes"</b>, provide the name/s of the child/children who died before the deceased <i>(insert more rows if needed or attach a schedule)</i>: _____</p> <p style="padding-left: 40px;">ii. <b>If the answer to (b) is "yes"</b>, are the surviving children/grandchildren of each child who died before the deceased listed in Part 6? Yes/No/N/A</p> <p style="padding-left: 40px;">iii. <b>If the answer to (b)(ii) is "no"</b>, provide the names and addresses of the deceased child's surviving children/grandchildren (if any). If any of them are minors, provide their dates of birth <i>(insert more rows if needed or attach a schedule)</i>. _____</p> <p>c. Did the deceased have a child/children who died after the deceased? Yes/No</p> <p style="padding-left: 40px;">i. <b>If the answer to (c) is "yes"</b>, are the name/s and addresses of the beneficiaries of the estate of each deceased child listed in Part 6 - Beneficiaries? Yes/No</p> <p style="padding-left: 40px;">ii. <b>If the answer to (c)(i) is "no"</b>, provide the name/s and addresses of the beneficiaries of the estate of each deceased child. _____</p>
2	Part 6 - Beneficiaries	Move the instructions from the bottom of section 1 to the top of section 1 since they apply to sections 1, 2 and 3.	<p><i>If the beneficiary's name includes a middle name, provide the middle name in the first name column.</i></p> <p><i>If the beneficiary's name in the Will is different from the name stated in this application (below in paragraphs 1, 2 or 3), in the row beneath the name, provide the name in the Will and explain the reason for the difference.</i></p>

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			<p>1. Persons less than 18 years of age who are entitled to share in the distribution of the estate.</p> <table border="1" data-bbox="1270 283 2896 541"> <thead> <tr> <th data-bbox="1270 283 1552 346">First Name(s)</th> <th data-bbox="1552 283 1792 346">Surname</th> <th data-bbox="1792 283 2021 346">Relationship to Deceased</th> <th data-bbox="2021 283 2294 346">Date of Birth</th> <th data-bbox="2294 283 2683 346">Parent's or Guardian's Name, Address and, if available, E-mail Address</th> <th data-bbox="2683 283 2896 346">Estimated Value of Interest in Estate</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td>[DD/MM/YYYY]</td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td>[DD/MM/YYYY]</td> <td></td> <td></td> </tr> </tbody> </table> <p><i>If the beneficiary's name includes a middle name, provide the middle name in the first name column.</i></p> <p><i>If the beneficiary's name in the Will is different from the name stated in this application (above in paragraph 1 or below in paragraphs 2 or 3), in the row beneath the name, provide the name in the Will and explain the reason for the difference.</i></p>	First Name(s)	Surname	Relationship to Deceased	Date of Birth	Parent's or Guardian's Name, Address and, if available, E-mail Address	Estimated Value of Interest in Estate				[DD/MM/YYYY]						[DD/MM/YYYY]		
First Name(s)	Surname	Relationship to Deceased	Date of Birth	Parent's or Guardian's Name, Address and, if available, E-mail Address	Estimated Value of Interest in Estate																
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3	Part 5 – Entitlement to Apply (in Form 74A only)	Replace the instructions to attach renunciation forms and consents with directions to file them “together with” the application to clarify that service of these documents is not required.	<p>I am entitled to apply to the court for the above-mentioned certificate because: (Check all that apply. You can delete the statements that do not apply.)</p> <p>.....</p> <p><input type="checkbox"/> All other persons entitled to apply for a certificate of appointment of estate trustee have renounced their right to do so. Identify any other person(s) who have a right to apply: _____ Attach A renunciation (Form 74G) for each of them <i>will be filed together with this application.</i></p> <p><input type="checkbox"/> I am not named as an estate trustee in the Will or codicil or there is no Will. However, consents of persons who together have a majority interest in the value of the assets of the estate at the date of death <del>are attached.</del> <i>will be filed together with this application.</i></p>																		
4	Part 8 - Declarations (in Form 74A only)	New optional declaration (new para. 3) to provide guidance on a) evidence which should be submitted in support of an application involving an estate where there is more than one will and b) the rule requirement to file a draft order (set out in r. 74.04(1)(g)).	<p>3. I:</p> <p><i>(Complete only if you are seeking a Certificate of Appointment of Estate Trustee Limited to the Assets Referred to in the Will and/or the deceased executed a secondary (or other multiple Will(s)) that deals with the assets referred to in that Will(s)).</i></p> <p><input type="checkbox"/> confirm that the secondary (or other multiple) Will(s) has/have not revoked the Will I am seeking to probate</p> <p><input type="checkbox"/> will file together with this application a draft order (Form 74I).</p>																		
5	Part 10 - Bond	<p>New check box to allow applicant to indicate that a court order was made appointing the applicant and dispensing with the bond requirement.</p> <p>A complementary change is made to Form 74J Part 8 – Bond.</p>	<p><i>(If a bond is required to be addressed, check one of the boxes below.)</i></p> <p><input type="checkbox"/> I will include a bond as part of the application that is submitted for filing with the court (Form 74L or 74M)</p> <p><input type="checkbox"/> None of the estate beneficiaries are minors or mentally incapable adults without a Guardian or Attorney with authority to act in this proceeding. I am seeking an order on consent to:</p> <p><input type="checkbox"/> dispense with the bond requirement</p> <p><input type="checkbox"/> reduce the amount of the bond and I will file with the court together with the application a draft order (Form 74I) together with a backsheet (Form 4C), an affidavit (Form 4D) and the consents of beneficiaries to the order (Form 74H) in accordance with rule 74.11(6).</p> <p><input type="checkbox"/> I am relying on the exemption from posting a bond under section 36(2) of the <i>Estates Act</i> since</p> <p>a) I was married to the deceased at the time of death; and</p> <p>b) the net value of the estate does not exceed \$350,000; and <i>(if the deceased died before March 1, 2021, strike \$350,000 above and indicate \$200,000)</i></p> <p>c) I will file with the court together with the application an affidavit setting forth the debts of the estate.</p> <p><input type="checkbox"/> I am acting on behalf of a trust company or Public Guardian and Trustee and therefore do not need to post a bond.</p> <p><input type="checkbox"/> I will file a motion under Rule 37 to seek an order to reduce the amount of the bond or to dispense with the bond requirement since the request cannot be made on consent.</p> <p><input type="checkbox"/> A court order made by Justice <i>(insert name of judge)</i> dated <i>(insert date)</i> appoints the applicant/s as estate trustee/s and dispenses with the requirement for the applicant/s to post a bond. A copy of the order will be filed together with this application.</p>																		

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6	Notice (to beneficiaries receiving the application)	Explanation to beneficiaries that the estate value disclosed in the application does not necessarily reflect the amount that will be available for distribution to beneficiaries.	<b>PLEASE NOTE:</b> .....  #5. The estate value disclosed in the application does not necessarily reflect the amount that will be available for distribution to beneficiaries.
7.	All parts-Formatting	New grey shading to highlight form instructions to improve readability.	

**Form 74J: Application for Certificate or Confirmation of Appointment**

8	Part 2 – Application for Certificate or Confirmation of Appointment	Clarify that charities and contingent beneficiaries should be identified as beneficiaries as required by rule 74.04(2).	<p><i>Only complete Part 2 if applying for a Certificate of Appointment of Succeeding Estate Trustee.</i></p> <table border="1"> <thead> <tr> <th>Name(s) of Estate trustee(s) to whom issued the first certificate of appointment of estate trustee was issued</th> <th>Date the certificate was issued</th> </tr> </thead> <tbody> <tr> <td></td> <td>[DD/MM/YYYY]</td> </tr> </tbody> </table> <p>The person(s) who are entitled to share in the distribution of the remaining estate, including charities and contingent beneficiaries, are (list names): _____.</p> <p>Together with this application, I am filing:</p> <p><input type="checkbox"/> the original certificate of appointment or, if the original certificate has been lost, a copy of it certified by the court that granted the appointment is being filed with this application</p> <p><input type="checkbox"/> (If applying with a Will) a renunciation (Form 74G) from every living person who is named in the Will or codicil as an estate trustee and who has not joined in the application and is entitled to do so</p> <p><input type="checkbox"/> (If applying without a Will or with a Will and the applicant is not named as an estate trustee in the Will or codicil) a consent (Form 74H) to the application by persons who are entitled to share in the distribution of the remaining estate, including charities and contingent beneficiaries, and who together have a majority interest in the value of the assets remaining in the estate at the date of the application</p> <p><input type="checkbox"/> (If applying for a Certificate of Appointment of Succeeding Estate Trustee with a Will limited to the assets referred to in the Will) a draft order (Form 74I) granting the certificate of appointment</p> <p><i>If completing this section, you must also complete Parts 5, 6 and 7.</i></p>	Name(s) of Estate trustee(s) to whom issued the first certificate of appointment of estate trustee was issued	Date the certificate was issued		[DD/MM/YYYY]
Name(s) of Estate trustee(s) to whom issued the first certificate of appointment of estate trustee was issued	Date the certificate was issued						
	[DD/MM/YYYY]						
9	Part 8 - Bond	<p>New check box to allow applicant to indicate that a court order was made appointing the applicant and dispensing with the bond requirement.</p> <p>Mirrors the change made to Form 74A and Form 74.1A Part 10 – Bond.</p>	<p><i>(If a bond is required to be addressed, check one of the boxes below)</i></p> <p><input type="checkbox"/> I will include a bond (Form 74L or 74M) as part of the application package that is submitted to the court for filing.</p> <p><input type="checkbox"/> None of the estate beneficiaries are minors or mentally incapable adults without a Guardian or Attorney with authority to act in this proceeding. I am seeking an order on consent to:</p> <p><input type="checkbox"/> dispense with the bond requirement</p> <p><input type="checkbox"/> reduce the amount of the bond</p> <p>and I will file with the court together with the application a draft order (Form 74I) together with a backsheet (Form 4C), an affidavit (Form 4D) and the consents of beneficiaries to the order (Form 74H) in accordance with rule 74.11(6).</p> <p><input type="checkbox"/> I am acting on behalf of a trust company or Public Guardian and Trustee and therefore do not need to post a bond.</p> <p><input type="checkbox"/> I will file a motion under Rule 37 to seek an order to reduce the amount of the bond or to dispense with the bond requirement since the request cannot be made on consent.</p> <p><input type="checkbox"/> A court order made by Justice (insert name of judge) dated (insert date) appoints the applicant/s as estate trustee/s and dispenses with the requirement for the applicant/s to post a bond. A copy of the order will be filed together with this application.</p>				
10.	All parts - Formatting	New grey shading to highlight form directions, improving readability.					

**Rules**

	Topic	Change	Text changes introduced by O. Reg. 188/23 (additions are set out in purple text; deletions are struck; black text is former text; grey highlights instructions)
11.	Commencement and transition rules for the revised forms and old forms	<p>New transition subrule to authorize service and filing of the old probate application forms for a defined period.</p> <p>The new rule 1.06(3) provides a formal grace-period to permit the use of completed and commissioned old (February 2022 version) application forms:</p> <ul style="list-style-type: none"> <li>○ <b>Old Form 74A and 74J applications:</b> Applicants can serve and file the February 2022 versions of these application forms until November 3, 2023.</li> <li>○ <b>Old Form 74.1A:</b> Applicants can serve the February 2022 version of this form until October 2, 2023, and can file it until November 3, 2023.</li> </ul> <p>Rule 1.06(3) is revoked on November 4, 2023.</p> <p>The new (May 2023) versions of:</p> <ul style="list-style-type: none"> <li>○ <b>New Forms 74A and 74J:</b> The May 2023 versions can be served and filed as of July 6, 2023 (if applicant chooses).</li> <li>○ <b>New Form 74.1A:</b> The May 2023 versions can be served as of July 6, 2023, and filed as of August 8, 2023 (if applicant chooses).</li> </ul>	<p><b>1. (1) Rule 1.06 of Regulation 194 of the Revised Regulations of Ontario, 1990 is amended by adding the following subrule:</b></p> <p><b>Exception, Forms 74A, 74J and 74.1A</b>  1.06 (3) Despite subrule (2),</p> <p>(a) the version of Forms 74A and 74J dated February 1, 2022 may be served and filed on or before November 3, 2023; and</p> <p>(b) the version of Form 74.1A dated February 1, 2022 may be served on or before October 2, 2023, and filed on or before November 3, 2023.</p> <p><b>(2) Subrule 1.06 (3) of the Regulation, as made by subsection (1), is revoked.</b></p> <p><b>2. The rows for Forms 74A, 74J and 74.1A in the Table of Forms to the Regulation are amended by striking out “February 1, 2022” in the column titled “Date of Form” and substituting “May 1, 2023”.</b></p> <p><b>Commencement</b></p> <p><b>3. (1) Except as otherwise provided in this section, this Regulation comes into force on the day it is filed.</b></p> <p><b>(2) Subsection 1 (2) comes into force on November 4, 2023.</b></p>