

### **Are there other benefits that can be applied for?**

Yes, under the Canada Pension Plan there is a surviving spouse's pension, orphans' benefits and death benefits. The surviving spouse's pension is paid monthly. The amount depends on how much the deceased contributed to the Canada Pension Plan. Child's benefits are paid monthly to dependent children of the deceased who are under 18 or between 18 and 25 and going to school full time.

### **How much can a lawyer charge to look after an estate?**

3% of the first \$100,000 (minimum \$1,500)  
1.25% of the next \$400,000  
1% of the next \$500,000  
0.5% on amounts over \$1,000,000

If the personal representative is a lawyer, trust company or Public Trustee, they are only entitled to 40% of those amounts.

### **How much are probate fees?**

Estate worth \$50,000 - \$350  
Estate worth \$100,000 - \$700  
Estate worth \$200,000 - \$1,400  
Estate worth \$300,000 - \$2,100  
Estate worth \$500,000 - \$3,500  
Estate worth \$1,000,000 - \$7,000

### **How much can an executor or administrator charge for looking after the estate?**

A fair and reasonable amount based on time and trouble. Executors often do not charge. The court can review the fees charged by the executor or administrator.

### **Under what circumstances can a will be challenged after the testator's death?**

If it can be shown that the testator did not have mental capacity when the will was made. Testators must know they are making a will and that the will sets out how their property is to be distributed after death. Testators must know how much and what kind of property they have. Testators must understand the normal expectations when a will is being made and must give rational thought about their will. A will can also be challenged if it can be shown that someone used undue influence on the testator when the will was drawn, in other words, pressured the testator into leaving them something in the will. A will can be challenged if there was fraud, if the testator was deceived into making a gift in the will.

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## **Estates**

### **What happens to my estate after death?**

Your Executor may have to apply for probate before being able to distribute the estate. Probate means proof. The Executor would have to file documents in court, including an affidavit signed by one of the witnesses to the will and an inventory of the property in the estate. If the court is satisfied the will is valid, the court will make an order called a Grant of Probate.

### **What about a small estate?**

For estates up to \$10,000 in value, the Executor can apply to court for an Administration Order and would not have to apply for probate.

### **Are there other situations when a will does not have to be probated?**

In situations where the estate consists of assets held jointly or if assets such as an investment or insurance policy are payable to a specific beneficiary. For example, if the only assets are a house held jointly with the spouse and an insurance policy payable to the spouse.

### **Does there have to be a reading of the will?**

There is no official reading of the will.

### **What happens to a gift in the will if the person dies before the testator?**

The gift fails and becomes part of the residue of the estate. But, if the person was a child, grandchild, great grandchild, brother or sister of the deceased, the gift would go to their issue. Issue means children, grandchildren, great grandchildren and so on.

**What happens if the testator sells or gives away something that was a gift in the will?**

The beneficiary of the gift would get nothing. Testators are free to deal with property as they wish during their lifetime.

**What happens if the deceased did not have a will?**

In that case, anyone who lives in Manitoba and has an interest in the estate (generally, the closest relative, with the surviving spouse or common law partner having the first right) may apply to the court for permission to distribute the deceased's estate. The court will give an order called Letters of Administration. The Administrator must give the court a personal guarantee that he or she will distribute the estate properly.

**Does the Administrator have to post a bond?**

Yes, for twice the value of the estate. Also, for estates over \$50,000, but less than \$100,000, a surety is also required. For estates over \$100,000 two sureties are required. A surety is a person or insurance company responsible for paying the amount of the bond if the Administrator does not look after the estate properly. But, if all the heirs are adults, they can consent to dispense with the bond, reduce the amount of the bond, or dispense with the need to have sureties.

**Does an Executor have to post a bond?**

No, unless the Executor is not a resident of Canada.

**What happens if someone dies without a will, how is their estate distributed?**

If you die without a will, *The Intestate Succession Act* sets out how your estate will be distributed. There is no flexibility in the provisions of *The Intestate Succession Act*.

**What happens if the deceased dies without a will and the deceased has a spouse or a common law partner, but no children?**

If the deceased has a spouse or common law partner and no issue (children, grandchildren, great-grandchildren, in other words lineal descendants), the entire estate goes to the surviving spouse or common law partner.

**What happens if the deceased dies without a will and the deceased has a spouse or common law partner and also has children with that spouse or common law partner?**

If the deceased has spouse or common law partner and no children with that spouse or common law partner, the entire estate goes to that surviving spouse or common law partner.

**What happens if the deceased dies without a will and the deceased has a spouse or a common law partner and children that are not children of the spouse or common law partner?**

If there is a spouse or common law partner and children who are not children of the deceased and the spouse or common law partner, the spouse or common law partner gets the first \$50,000 plus half of the remainder of the estate, or half of the estate, whichever is greater. The deceased's children share the remainder.

**What if the deceased dies without a will and has no spouse or common law partner, but has children?**

If there is no spouse or common law partner, but there are children, the children share the estate in equal shares.

**What if the deceased dies without a will and has no spouse or common law partner and no children?**

If there is no spouse or common law partner or children, grandchildren or great-grandchildren, the deceased's parents get the estate.

**What if the deceased dies without a will and has no spouse or common law partner, no children and no parents?**

If there is no spouse or common law partner or children or parents, the deceased's brothers and sisters get the estate.

**What if the deceased dies without a will and has no spouse or common partner, no children, no parents and no brothers or sisters?**

If there is no spouse or common law partner or children or parents or brothers and sister, the nephews and nieces get the estate.

**What if the deceased dies without a will and has no family at all?**

The estate would go to the provincial government.

**What about adopted children or half siblings?**

When someone dies without a will, adopted children and half siblings are all viewed as children of the deceased.

**What are the Duties of the Executor/Administrator?**

Duties include looking after funeral arrangements, making sure debts are paid, making sure final returns are filed and taxes are paid, giving notice under *The Family Property Act* to the surviving spouse or common law partner. This notice must be given within 30 days of getting the Grant of Probate or Letters of Administration. The notice says that the spouse or common law partner has 6 months to make a claim against the estate for an equal division of marital property. The Executor or Administrator must also keep accounts of the money collected and the money distributed. Usually the beneficiaries must approve the accounts. If they do not, the Executor or Administrator would ask the court to approve the accounts.