

For Executors - Detailed Step-by-Step Instructions on How to Apply for Probate in Manitoba

- STEP 1 Find the Will.** Locate the deceased's signed original will (not a photocopy). It is likely either among the deceased's personal papers or with his or her lawyer or trust company. Sometimes people give their executor a copy of their will and a letter or memo with additional information about their wishes.
- STEP 2 Find the Affidavit of Execution.** Check whether there is a Form 74F Affidavit of Execution of Will or Codicil with the will. (If this was not signed at the time the will was executed, you will have to contact one of the witnesses to the signing of the will and have the Form 74 affidavit sworn by him or her before applying for probate.)
- STEP 3 Consider who should serve as the executor/s.** There may be more than one person named as executor in the will. Now is the time for executors to consider renunciation. Executors should consider whether they are willing and able to act as executors. Joint executors should consider whether it would be preferable that one person only act as a single executor, due to the possible inconvenience of acting as joint executors (particularly where one executor lives outside of Manitoba). Executors must be unanimous in their decisions unless specified otherwise in the will. If one of the co-executors lives outside Canada he or she may have to post a bond (SPA s. 7(2)) and should consult a lawyer for advice about possible tax implications relating to the residence of trusts.
- STEP 4 Decide whether you should see a lawyer about the estate.** Review the terms of the will and its form, and assess whether there are any potential problems or issues that would make it necessary or desirable to consult a lawyer. (See above section – **When this guide should not be used.**)

STEP 5 Get the Probate forms and fill them out. You will need copies of the forms you must file with the court. The forms are specified by Queen's Bench Rule 74. You do not need to use a computer in order to get your forms or fill them out. You may print neatly in pen on the pre-printed forms and cross out information that is not applicable (see the precedents at the back of this guide). Text in court documents can be printed, typewritten, or handwritten legibly. Only one side of the paper is to be used, and dates, numbers and sums are to be expressed in figures.

If you have access to a computer and Internet access, you can get the forms online at the Province of Manitoba website. You can download them in PDF or WordPerfect format and type in your information.

http://web2.gov.mb.ca/laws/rules/forms_e.php

You can also get the paper documents from The Queen's Printer - Statutory Publications (20-200 Vaughan Street, Winnipeg, Manitoba R3C 1T5 telephone: 204-945-3101, e-mail: statpub@gov.mb.ca). You can go there in person, call, or order from the website (<http://www.gov.mb.ca/queensprinter/>). If you use these documents, you will write your information on them (if there is room), or you can use them as a guide and re-type them.

The forms come together in a package. Ask for the:

Queen's Bench - General Division - Surrogate Probate set

Price: \$1.50

Includes:

- 6A Covering Page Request (note – this form is not available online)
- 74A Request for Probate of Will
- 74B Inventory and Valuation of the Property of the Deceased
- 74C Affidavit in Support of Request for Probate
- 74F Affidavit of Execution of Will or Codicil (this should be with the will)
- 74J Grant of Probate (2 copies)

STEP 6 Find out what assets exist and form part of the estate. Review the will and personal papers of the deceased, including any instructions and list of assets he or she may have left to you as executor, and the contents of his or her safety deposit box, bank statements, and investigate what assets exist but are not specifically named in the will by discussing this with the deceased's spouse, accountant, employer and financial institutions.

STEP 7 Consider survivorship provisions. The court cannot grant probate or letters of administration with the will annexed until seven days after the death of the testator (unless a judge otherwise directs) (QBR 74.02 (18)). A will may also contain a clause that extends the amount of time that the executor must outlive the testator before applying to probate the will.

STEP 8 Begin preparing Form 74B Inventory and Valuation of the Property of the Deceased. Assess the value and nature of the assets and determine whether the will must be probated. Only property that is in the deceased's name alone should be included, unless there is a joint bank account that the deceased intended to be included in the estate. If the estate assets are worth \$10,000 or less, you can apply for an "Order under Section 47 of *The Court of Queen's Bench Surrogate Practice Act*" Administration Order.

STEP 9 Prepare the forms that you need to file at court (see below)

Forms to Prepare and File at Court

Review the Probate precedents in the back of this guide for assistance in filling out the forms, page 40.

6A Covering Page Request

This form is not available online, but you can re-type it from the form that appears in the precedents section in the back of this guide. It is also very similar to the last page of the Form 74A, so you could also print an extra copy of 74A and put it on the front of your application if you are downloading the forms from the web.

74A Request for Probate of Will

This is a simple form that asks the court to grant probate and identifies the deceased, asks for his or her marital information, when the will was signed, and for information on the executor or executors, including place of residence and occupation. All executors' information must be included and all executors must sign it. Ensure that the full legal names of the testator and executors are used. If in the will, anything other than the full legal name was used for either, add a line that explains this. For example, if the testator's legal name was James Potts, but in the will he was named as Jimmy Potts, write: "James Potts (shown in the will as Jimmy Potts), late of the City of Winnipeg..."

74B Inventory and Valuation of the Property of the Deceased

Do not include jointly held real or personal property. Only property that is in the deceased's name alone should be included, unless there is a joint bank account that the deceased intended to be included in the estate.

If you find out after you apply for probate that other assets exist that you did not list, you can file an amended valuation within 30 days of the discovery, and pay the additional fees required at that time.

Any "right of action" that the estate has should be valued at \$1.00 and then amended later if necessary. If you include a right of action, you must also provide the court with a letter stating that you will provide an amended inventory once the value is determined and that you will pay the additional probate charge at that time.

The value of property for probate or administration purposes is the fair market value of the property less any incumbrances. (Queens Bench Rule S.74.07(1)) so show only the net value.

Do not include life insurance or life insured RRSPs payable to named beneficiaries – only include these if they are payable to the estate.

Note: Be aware that any interested person or the court can inquire further into the assets of the deceased, and the executor may have to provide the additional information. The rules that govern this are QBR 74.06.1 (1) - 74.06.2(3).

74C Affidavit in Support of Request for Probate

This affidavit is to show the last will is being submitted by you and to say that you have included all the assets on the valuation and that you will account to the court or beneficiaries if required to do so. This document must be sworn or affirmed before a Commissioner for Oaths or Notary Public. You can find a Commissioner for Oaths or Notary Public in the Yellow Pages under Commissioners for Oaths or Notaries Public.

74J Grant of Probate (2 copies)

This is a very straightforward document. You will fill in the details about the testator and his or her date of death and occupation and your name and the other executors' name/s, if applicable. The court requires two copies. Leave the Judge's name and the date blank.

In addition to these forms, you must also bring:

The executed (signed) original will with affidavit of execution

If the affidavit of execution was not signed at the same time as the will, an affidavit will have to be prepared and signed now by one of the witnesses to the will. If neither witness can be located, an affidavit should be prepared that lists the efforts made by the executor to find the witnesses and obtain proof that the signature on the will is that of the testator. A witness to a will cannot swear the Affidavit of Execution of a will. (QBR 74.02(5)).

The Commissioner or Notary must mark the will as an exhibit to the executor's **Affidavit in Support of Request for Probate** and to the **Request for Probate**. The executor must sign the will to identify it. The wording is "This is the last Will and Testament of (testator's name)" "(executor's name), Executor (for identification purposes)".

Two photocopies of the executed original will (not including the affidavit of execution)

If any executor is renouncing his or her appointment, you must also get:

Form 740 Renunciation

Form 74T.1 Affidavit of Execution of Renunciation

When an executor decides he or she (or in the case of a corporate executor like a trust company, it) decides not to act as an executor, he or she or it must prepare and sign the Form 740 Renunciation Form in the presence of a witness. That witness must also sign a Form 74T.1 Affidavit of Execution of Renunciation, which must be sworn before a Commissioner for Oaths or a Notary Public.

74G Affidavit of Plight and Finding

This is required if there are any marks in the will which were aimed at modifying the contents – extra words written in, things crossed out, alterations, etc. and not initialed by the testator or the two witnesses. These changes would not be included in the probate, unless an affidavit in Form 74G is prepared and signed by the executor that states they existed in the will prior to its execution, or by republication of the will or execution of a codicil. (QBR 74.02(09), *The Wills Act* s. 23.) See a lawyer, or get some legal advice at this point.

Also, if suspicious circumstances exist and it looks as if someone has tried to obliterate something in the will, probate will not be granted until all such matters have been explained to the satisfaction of a judge. (QBR 74.02(10)).

For this situation, see a lawyer or obtain legal advice.

In Case of a Holograph Will or Codicil

A holograph will or codicil is a will or codicil written wholly in the testator's own handwriting and signed at the end by him or her. A holograph will does not require a witness. (*The Wills Act* s.6)

In order to probate a holograph will or codicil, an affidavit in **Form 4D** (also available online or at Statutory Publications) must be prepared and sworn by a person who is familiar with the testator's handwriting and signature and who says the writing and signature is the testator's, and that at the time of the writing of the will or codicil, the testator was of the age of majority and that he or she appeared to be of sound mind, memory and understanding at that time.

STEP 10 Go to the Court of Queen's Bench and file the forms.

You do not need to make an appointment. Just go to the Court of Queen's Bench Office nearest where you live with the documents and filing fee. Estate matters at The Court of Queen's Bench in Winnipeg are dealt with in Room 100C. (This is just a section of the long counter where all incoming matters are handled. As you enter the court, turn right and look for the sign that says Wills and Estates.) You will take a number for service and then a clerk will take your forms and fees and they will be reviewed and dealt with by Court staff and a Master or a Judge. You will be given a file number.

STEP 11 Pay the Probate Fee

Many banks will advance the probate charge from the deceased's account. Calculate the amount owing as follows:

Where the value of the property in the estate is more than \$10,000:
\$70
plus \$7 for every additional \$1,000 of value or fraction thereof.

For example, an estate worth \$100,000 would have to pay \$700 for the probate charge.

You can calculate the amount using the online Manitoba Courts Probate Calculator:

<http://www.jus.gov.mb.ca/Domain/Misc/ProbateCalc.aspx>

You can pay by Visa, Mastercard, cash, cheque or money order, made payable to the Minister of Finance.

If your documents are not in the proper form they may be rejected. In that case you will have to pay a \$5.00 Rejection Fee.

STEP 12 Receipt of Grant of Probate

Once you receive the grant of probate you will have the authority to deal with the estate assets held by various institutions. Some institutions may require a notarial copy, and also require a death certificate of the deceased.